

1 LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP

2 TRAVIS E. DOWNS III (148274)
BENNY C. GOODMAN III (211302)
3 THOMAS G. WILHELM (234980)

655 West Broadway, Suite 1900

4 San Diego, CA 92101

Telephone: 619/231-1058

5 619/231-7423 (fax)

travisd@lerachlaw.com

6 bgoodman@lerachlaw.com

twilhelm@lerachlaw.com

7 - and -

SHAWN A. WILLIAMS (213113)

8 100 Pine Street, Suite 2600

San Francisco, CA 94111

9 Telephone: 415/288-4545

415/288-4534 (fax)

10 swilliams@lerachlaw.com

11 Attorneys for Plaintiffs

12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA

14 SAN JOSE DIVISION

15 In re NOVELLUS SYSTEMS, INC.
DERIVATIVE LITIGATION

) No. C-06-03514-RMW

) CONSOLIDATED VERIFIED

) SHAREHOLDER DERIVATIVE

17 This Document Relates To:

) COMPLAINT FOR VIOLATION OF

) FEDERAL SECURITIES LAWS, BREACH

18 ALL ACTIONS.

) OF FIDUCIARY DUTIES, GROSS

) MISMANAGEMENT, AND ACCOUNTING

) AND CALIFORNIA CORPORATIONS

) CODE SECTIONS 25402 AND 25502.2

21
22
23
24
25
26
27
28
REDACTED VERSION

INTRODUCTION AND OVERVIEW

1. This is a consolidated shareholder derivative action brought by Lead Plaintiff Alaska Electrical Pension Fund (“Alaska Pension”) derivatively on behalf of Novellus Systems, Inc. (“Novellus” or the “Company”), against its entire Board of Directors and certain current officers and former top officers and/or directors (collectively, the “Individual Defendants”).¹

2. The action seeks to remedy defendants’ violations of federal and California state law, including the Sarbanes-Oxley Act of 2002 (“Sarbanes-Oxley”), §10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 10b-5 promulgated thereunder, §14(a) of the Securities Exchange Act, §20 of the Securities Exchange Act, Cal. Corp. Code §§25402, as well as breaches of fiduciary duties, abuse of control, gross mismanagement, constructive fraud, waste of corporate assets, and unjust enrichment between 1996-2006 (the “Relevant Period”).

3. Plaintiffs demand an accounting of all stock option grants made to Defendants during times relevant hereto, the rescission of all contracts which provide for stock option grants between any of the Defendants and Novellus which were entered into during times relevant hereto, and a declaration that the illicit stock options, and all proceeds derived from exercise thereof, are and have been held in constructive trust for the Company’s benefit.

4. Nominal party Novellus is a California corporation with its principal executive offices located at 4000 North First Street, San Jose, California. Novellus purports to be a leading provider of advanced process equipment for the global semiconductor industry. Novellus manufactures, markets and services advanced deposition, surface preparation and chemical mechanical planarization equipment for advanced integrated circuits. Novellus is headquartered in San Jose, CA. The Company maintains engineering & manufacturing facilities in both San Jose and Tualatin, Oregon, and has sales and service operations in 16 countries around the world.

¹ The Individual Defendants are Richard S. Hill (“Hill”), Jeffrey C. Benzing (“Benzing”), William H. Kurtz (“Kurtz”), Neil R. Bonke (“Bonke”), Youssef A. El-Mansy (“El-Mansy”), J. David Litster (“Litster”), Yoshio Nishi (“Nishi”), Glen G. Possley (“Possley”), Ann D. Rhoads (“Rhoads”), William R. Spivey (“Spivey”), Delbert A. Whitaker (“Whitaker”), D. James Guzy (“Guzy”), Tom Long (“Long”), and Robert H. Smith (“Smith”).

1 5. During the Relevant Period, the Company's executives and its non-employee
2 directors were compensated in large part through the issuance of stock options. A stock option
3 granted to an employee and/or director of a corporation allows the employee and/or director to
4 purchase company stock at a specified price – referred to as the “exercise price,” typically the fair
5 market value of the stock on the date the option is granted. When properly issued, stock options
6 serve as a valuable part of employee and/or director compensation packages as a means to create
7 incentives to boost profitability and stock value. When the employee and/or director exercises the
8 option, he or she purchases the stock from the Company at the exercise price, regardless of the
9 stock's price at the time the option is exercised.

10 6. Dating back to at least 1997, many of the Individual Defendants engaged in a
11 scheme and course of conduct designed to manipulate Novellus stock option grant dates so as to
12 secretly maximize profits to themselves and other Company executives at the expense of the
13 Company and its shareholders. Specifically, the Individual Defendants, the Board, and senior
14 officers at the Company approved the granting of backdated/misdated stock options in abdication
15 of their fiduciary duties.

16 7. “Backdating”² is a practice by which a stock option is reported as having been
17 granted on one date, but is actually backdated weeks or months to a date where the stock price
18 was trading at a lower price. Such backdating allows Company executives and stock option
19 grantees to realize immediate unearned and undisclosed financial gains at the expense of the
20 Company's shareholders. Backdating of stock option grants has been compared to picking lottery
21 numbers on the day after the winning numbers are announced, or betting on a horse after the race
22 has finished. Arthur Levitt, a former chairman of the Securities and Exchange Commission
23 (“SEC”) was quoted as stating that stock option backdating “represents the ultimate in greed.”³

24
25 ² Plaintiffs' use of the terms “backdating,” “misdating,” “backdated,” and “misdated”
26 throughout this Complaint may also refer to other forms of related stock option manipulation
perpetrated by defendants in this action.

27 ³ For all citations, emphasis has been added and citations and quotations omitted, unless
28 otherwise indicated.

1 Further, Levitt stated, "It is stealing, in effect. *It is ripping off shareholders in an*
2 *unconscionable way.*" On May 5, 2006, President George W. Bush stated in an interview on the
3 Kudlow & Company show airing on CNBC that "overcompensating or trying to backdate things
4 is bad for America, and there ought to be consequences when people don't tell the truth and are
5 not transparent."

6 8. In addition, former SEC Chairman Harvey Pitt has opined that the backdating of
7 stock options often involves the falsification of documents for personal gain:

8 Many discussions of backdating options start with the observation that
9 backdating is not, per se, illegal. *That is wrong. Options backdating*
10 *frequently involves falsification of records used to gain access to*
11 *corporate assets.* That conduct violates the Foreign Corrupt Practices Act
12 and its internal controls requirements. If corporate directors were
13 complicit in these efforts, state law fiduciary obligations are violated.
14 *Backdating is not only illegal and unethical, it points to a lack of*
15 *integrity in a company's internal controls.*

16 9. Furthermore, backdating stock options creates an instant paper gain to grantees
17 who receive them because the options were really priced below the stock's fair market value when
18 they were actually awarded. Under Generally Accepted Accounting Principles ("GAAP"), this
19 instant paper gain is equivalent to paying extra compensation and thus is a cost to Novellus.
20 Accordingly, Novellus was required to record an expense on its financial statements for any
21 options granted below the fair market value on the grant date of the option, or "in the money"
22 options. However, the Individual Defendants did not properly record these known costs on
23 Novellus' financial statements, causing Novellus' financial statements throughout the Relevant
24 Period to be issued in violation of GAAP. Specifically, these financial statements overstated
25 reported earnings and understated reported expenses.

26 10. In addition to defendants' clear breach of fiduciary duty and violation of
27 accounting rules, defendants' backdating of stock options may have extremely serious tax
28 consequences for the Company. While stock options generally qualify for favorable tax
treatment, options issued at a discount to the market price do not qualify for that treatment.
Accordingly, backdated stock options are automatically disqualified from that favorable tax relief,
and Novellus may owe millions of dollars in unpaid taxes.

11. Between 1996 and May 2006, Defendants also caused Novellus to file false and misleading statements with the Securities and Exchange Commission ("SEC"), including Proxy Statements filed with the SEC which stated that the options granted by Novellus carried with them an exercise price that was not less than the fair market value of Novellus stock on the date of grant and issuance.

12. In fact, Defendants were aware that the practices employed by the Board allowed stock option grants to be backdated to dates when the Company's shares were trading at or near the lowest price for that Relevant Period. Defendants' backdating scheme yielded stock option grants to the Company's executive officers worth millions of dollars, contributing to their ability to sell over \$128 million worth of Novellus stock during the Relevant Period.

13. Novellus' financial results as reported and filed with the SEC were false. Defendants' misrepresentations and wrongful course of conduct violated the Exchange Act, as well as state law. By authorizing and/or acquiescing in the stock option backdating scheme, Defendants: (i) caused Novellus to issue false statements; (ii) diverted hundreds of millions of dollars of corporate assets to senior Novellus executives; and (iii) subjected Novellus to potential liability from regulators, including the SEC and the IRS.

14. Defendants' gross mismanagement and malfeasance over the past decade has exposed Novellus and its senior executives to potential criminal and civil liability for issuing false and misleading financial statements. Specifically, defendants caused or allowed Novellus to issue statements that failed to disclose or misstated the following: (i) that the Company had material weaknesses with its internal controls that prevented it from issuing accurate financial reports and projections; (ii) that because of improperly recorded stock-based compensation expenses, the Company's financial results violated GAAP; and (iii) that the Company's public disclosures presented an inflated view of Novellus' earnings and earnings per share.

15. Defendants' malfeasance and mismanagement during the Relevant Period has wreaked substantial damage on Novellus. The Company's senior executives were incentivized to over-pay themselves, to profit from their misconduct by cashing in on under-priced stock options and to issue false financial statements to cover up their misdeeds. Defendants' breaches of

fiduciary duties in the administration of the Company's stock option plans polluted the plans with grant date manipulations so as to undermine the validity of all grants made pursuant to the plans. Meanwhile, certain of the Defendants, who received under-priced stock options and/or knew material non-public information regarding Novellus' internal control problems, abused their fiduciary relationship with the Company by selling over \$128 million worth of their personally held shares at artificially inflated prices during the Relevant Period.

DEFENDANT	DATES OF SALES	SHARES SOLD	PROCEEDS RECEIVED
BENZING	11/25/96-2/26/04	689,390	\$24,105,814
EL-MANSY	5/12/2006	1,667	\$40,323
HILL	2/27/96-6/6/03	3,053,005	\$98,837,495
LITSTER	11/9/99-5/4/06	52,117	\$1,972,498
POSSLEY	11/22/96-11/24/98	110,250	\$1,561,518
SPIVEY	4/27/01-6/6/03	37,800	\$1,646,861
TOTAL		3,944,229	\$128,164,509

This action seeks recovery for Novellus against these so-called fiduciaries, as Novellus' Board of Directors, as currently composed, is simply unable and unwilling to do so.

Illegal Backdating at Novellus Revealed

16. On May 16, 2006, the Center for Financial Research and Analysis ("CFRA") issued a report: "Options Backdating – Which Companies Are at Risk?" The report identified the risks for companies that have taken part in options backdating:

- SEC investigation risk – The SEC has begun informal investigations at many companies in recent months and has also begun to call for improved disclosure around all areas of executive compensation.
- Accounting restatement risk – Some companies which have admitted backdating options have accompanied those admissions with financial restatements impacting both the balance sheet and earnings.
- Tax/Cash implications – The change in options from the practice of options backdating may force some companies to restate tax positions for the years in question, which could result in an obligation to pay back taxes.
- Management credibility risk – If a reputable management team is found to have repeatedly backdated options, thereby enriching themselves at the expense of shareholders, the reputation of management (and the related stock premium for superior management) could take a hit.

1 17. On May 22, 2006, Merrill Lynch published a report entitled “Options Pricing –
2 Hindsight is 20/20.” The report contained an analysis of options grant timing for the
3 semiconductor and semiconductor equipment companies that comprise the Philadelphia
4 Semiconductor Index. The report focused on identifying companies where stock option grants
5 preceded large increases in a Company’s stock price. In this analysis, Novellus was ranked fourth
6 and labeled a “standout company” in terms of companies with excess returns following grant
7 dates – *i.e.*, companies that were likely to have backdated stock options.

8 18. Remarkably, the same day that the Merrill Lynch report was released, on May 22,
9 2006, Novellus issued a press release denying the implications of the report and stating “that it has
10 reviewed a Merrill Lynch report regarding options pricing in the semiconductor industry.
11 Novellus has reviewed its process of granting options *to the named executive officers* in the
12 report and has not found any irregularities.”

13 19. However, the Company’s hasty review of their granting practices and denials of
14 backdating did not quiet speculation surrounding the highly suspicious timing of some of their
15 options grants.

16 20. On May 25, 2006, Merrill Lynch issued an expanded report including a total of 47
17 companies in the semiconductor industry. Novellus was still ranked near the top of the list—now
18 at ninth place. The report stated that “[t]he results are notable—for the 1997-2002 interval that we
19 studied, the stocks in our coverage universe have consistently generated excess returns during the
20 20-day period following options grants. It is difficult to avoid concluding that the timing of
21 options pricing for the period we studied has been very advantageous for the executives that
22 received options.”

23 21. On June 19, 2006, a Standard & Poor’s analyst expressed similar concerns:

24 Our review of Novellus Systems proxy filings and related research indicates that
25 the 12/16/1999 stock options grant was followed by an upward revision to
26 guidance that drove the stock 33% higher on Monday 12/20/1999. With the
27 Securities and Exchange Commission options-backdating investigation now
28 expanding to the timing of news flow, we are concerned that Novellus Systems
may face exposure to this investigation despite the proximity of the 1999 date to
grants in other years. In addition, following changing peer multiples, we believe
Novellus Systems shares are overvalued, and we are reducing our 12-month target
price to \$20 from \$34.

22. In October 2006, another research report regarding options backdating was released by The Corporate Library. The Corporate Library is a leading independent source for U.S. corporate governance and executive and director compensation information and analysis. This report examined interlocking relationships between directors and executives at 51 companies that had been implicated in options backdating reports. In particular, it analyzed how the practice of backdating stock options could have spread between the companies now implicated in the scandal. The report showed that many of the companies involved in the scandal had directors and executives in common that could have spread the practice throughout the companies. The Corporate Library determined that Novellus was one of the three most central companies in terms of connections to other implicated companies. See ¶¶177(i).

23. Repeating their blanket denials in response to The Corporate Library report, Novellus was quoted in an October 19, 2006 article in CFO.com, as saying:

Novellus has not been implicated in any wrongdoing with regard to stock options backdating. Novellus has *always* filed its financial reports on time. In addition, Novellus reviewed its processes with two legal firms, internal and external auditors and its Board of Directors. The company issued a press release on May 22, 2006 stating that the company reviewed its process of granting options and did not find any irregularities.

24. As discussed below, however, at ¶¶83, 86, this too was false and misleading as throughout the Relevant Period Defendants filed Form 4's with the SEC well after the prescribed time, thereby facilitating the concealment of backdating stock options.

25. Most recently, on November 17, 2006, in an awkwardly worded disclosure, Novellus announced that their principal accounting officer was being replaced:

In connection with the appointment of William H. Kurtz as the principal accounting officer of the Company, described in Item 5.02(c) below, Thomas R. Foy, who had been the principal accounting officer, was replaced by Mr. Kurtz as the principal accounting officer, effective November 13, 2006. Mr. Kurtz remains the Company's Executive Vice President and Chief Financial Officer.

**NOVELLUS' DOCUMENTS SHOW CLEAR IRREGULARITIES IN THE
COMPANY'S OPTION GRANTING PRACTICES**

26. On September 8, 2006, this Court held a Case Management Conference during which it consolidated the two derivative actions brought against Novellus, and ordered defendants to complete their Rule 26 initial disclosures within 21 days.

27. [REDACTED]

28. [REDACTED]

[REDACTED] that:

“[t]he exercise price of all stock options granted under the Option Plan must equal at least the fair market value of the Common Stock of the Company on the date of grant. The fair market value of the Common Stock on a given date is determined by the Board of Directors based upon the last sale price of the Common Stock on the Nasdaq National Market System as of such date.”

[REDACTED] One of the suspicious grants is a 100,000 options grant to defendant Hill on January 2, 1997. On that date, the closing price of Novellus stock was at its lowest for the first quarter of 1997 – \$55.50. A document entitled [REDACTED]

⁴ In 2001, the Stock Option Committee and the Compensation Committee merged to become the Stock Option and Compensation Committee. Unless otherwise noted, references to the “Stock Option Committee” refer to the Stock Option Committee and/or the Stock Option and Compensation Committee.

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 31. [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]

20 32. In the face of this strong evidence of backdating, Novellus' Directors and
21 Executives have refused to take any action to pursue these claims on behalf of the Company.
22 Instead, they have issued repeated and unsubstantiated denials, which will only cause further harm
23 to the Company. There is simply no way for Novellus, based upon these documents, to conclude
24 that the granting process at Novellus was in line with representations in the Company's proxy
25 statements that the stock option exercise prices reflected the fair market value of Novellus stock
26 on the date they were granted. Instead, the documents together with the extremely fortuitous
27 timing of certain options grants, show a strong likelihood that options grants were in fact
28 backdated.

33. Indeed, the backdating of stock options will cause Novellus substantial tax and regulatory liability, and the Company will need to expend significant resources associated with the following:

(a) costs incurred to carry out internal investigations, including legal fees paid to outside counsel, accounting firms and consultants;

(b) costs incurred from increased directors' and officers' insurance premiums as a result of the illegally manipulated stock option grants;

(c) costs incurred from directing manpower to correct Novellus' defective internal controls;

(d) costs incurred from directing manpower away from other projects in order to restate Novellus' financial results;

(e) costs associated with the Company's unpaid taxes resulting from the backdating of stock options; and

(f) costs already incurred and that will continue to be incurred to respond to investigations by the Attorney General and SEC.

JURISDICTION AND VENUE

34. The claims asserted herein arise under §§10(b), 14(a) and 20(a) of the Exchange Act, 15 U.S.C. §§78j(b), 78n(a) and 78t(a), and Rule 10b-5, 17 C.F.R. §240.10b-5, promulgated thereunder, and under California law for breach of fiduciary duty, abuse of control, constructive fraud, corporate waste, unjust enrichment and gross mismanagement. In connection with the acts, conduct and other wrongs complained of herein, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, the United States mail and the facilities of a national securities market.

35. This Court has subject matter jurisdiction pursuant to §27 of the Exchange Act, 15 U.S.C. §78aa, as well as 28 U.S.C. §§1331 and 1337. This Court also has supplemental jurisdiction over the state law claims asserted herein pursuant to 28 U.S.C. §1367.

36. This action is not a collusive one to confer jurisdiction on a court of the United States which it would not otherwise have.

1 Development, Engineering and Manufacturing Operations and from January 2002 through
2 February 2004, he served as Executive Vice President of the Deposition Business Group, until he
3 was elected to his current position with Novellus. Because of Benzing's positions, he knew the
4 adverse non-public information about the business of Novellus, as well as its finances, markets
5 and present and future business prospects, via access to internal corporate documents,
6 conversations and connections with other corporate officers and employees, attendance at
7 management meetings and via reports and other information provided to him in connection
8 therewith. During the Relevant Period, Benzing participated in the issuance of false and/or
9 misleading statements, including the preparation of the false and/or misleading press releases and
10 SEC filings. Based on his knowledge of material non-public information regarding the Company,
11 defendant Benzing violated Cal. Corp. Code §§25402 and 25502.5 by selling 689,390 shares of
12 Novellus stock for proceeds of \$24.1 million during the Relevant Period.

13 42. Defendant William H. Kurtz has been Chief Financial Officer ("CFO") and
14 Executive Vice President of Novellus since September 2005. Because of Kurtz's position, he
15 knew the adverse non-public information about the business of Novellus, as well as its finances,
16 markets and present and future business prospects, via access to internal corporate documents,
17 conversations and connections with other corporate officers and employees, attendance at
18 management meetings and via reports and other information provided to him in connection
19 therewith. During the Relevant Period, Kurtz participated in the issuance of false and/or
20 misleading statements, including the preparation of the false and/or misleading press releases and
21 SEC filings.

22 43. Defendant Neil R. Bonke has been a director of Novellus since April 2004.
23 Because of Bonke's position, he knew the adverse non-public information about the business of
24 Novellus, as well as its finances, markets and present and future business prospects, via access to
25 internal corporate documents, conversations and connections with other corporate officers and
26 employees, attendance at Board meetings and committees thereof and via reports and other
27 information provided to him in connection therewith. During the Relevant Period, Bonke
28 participated in the issuance of false and/or misleading statements, including the preparation of the

1 false and/or misleading press releases and SEC filings. As a member of the Audit Committee,
2 defendant Bonke caused or allowed the dissemination of the improper public statements described
3 herein.

4 44. Defendant Youssef A. El-Mansy has been a director of Novellus since 2004.
5 Because of El-Mansy's position, he knew the adverse non-public information about the business
6 of Novellus, as well as its finances, markets and present and future business prospects, via access
7 to internal corporate documents, conversations and connections with other corporate officers and
8 employees, attendance at Board meetings and committees thereof and via reports and other
9 information provided to him in connection therewith. During the Relevant Period, El-Mansy
10 participated in the issuance of false and/or misleading statements, including the preparation of the
11 false and/or misleading press releases and SEC filings. As a member of the Compensation and
12 Governance and Nominating Committees, defendant El-Mansy controlled the other Defendants'
13 stock option awards and caused or allowed the dissemination of the improper public statements
14 described herein. Based on his knowledge of material non-public information regarding the
15 Company, defendant El-Mansy violated Cal. Corp. Code §§25402 and 25502.5 by selling 1,667
16 shares of Novellus stock for proceeds of \$40,323 during the Relevant Period.

17 45. Defendant J. David Litster has been a director of Novellus since February 1998.
18 Because of Litster's position, he knew the adverse non-public information about the business of
19 Novellus, as well as its finances, markets and present and future business prospects, via access to
20 internal corporate documents, conversations and connections with other corporate officers and
21 employees, attendance at Board meetings and committees thereof and via reports and other
22 information provided to him in connection therewith. During the Relevant Period, Litster
23 participated in the issuance of false and/or misleading statements, including the preparation of the
24 false and/or misleading press releases and SEC filings. As a member of the Compensation and
25 Governance and Nominating Committees, defendant Litster controlled the other Defendants'
26 stock option awards and caused or allowed the dissemination of the improper public statements
27 described herein. Based on his knowledge of material non-public information regarding the
28

1 Company, defendant Litster violated Cal. Corp. Code §§25402 and 25502.5 by selling 52,117
2 shares of Novellus stock for proceeds of nearly \$2 million during the Relevant Period.

3 46. Defendant Yoshio Nishi has been a director of Novellus since 2002. Because of
4 Nishi's position, he knew the adverse non-public information about the business of Novellus, as
5 well as its finances, markets and present and future business prospects, via access to internal
6 corporate documents, conversations and connections with other corporate officers and employees,
7 attendance at Board meetings and committees thereof and via reports and other information
8 provided to him in connection therewith. During the Relevant Period, Nishi participated in the
9 issuance of false and/or misleading statements, including the preparation of the false and/or
10 misleading press releases and SEC filings. As a member of the Compensation and Governance
11 and Nominating Committees, defendant Nishi controlled the other Defendants' stock option
12 awards and caused or allowed the dissemination of the improper public statements described
13 herein.

14 47. Defendant Glen G. Possley has been a director of Novellus since July 1991.
15 Because of Possley's position, he knew the adverse non-public information about the business of
16 Novellus, as well as its finances, markets and present and future business prospects, via access to
17 internal corporate documents, conversations and connections with other corporate officers and
18 employees, attendance at Board meetings and committees thereof and via reports and other
19 information provided to him in connection therewith. As a member of the Audit Committee,
20 defendant Possley caused or allowed the dissemination of the improper public statements
21 described herein. During the Relevant Period, Possley participated in the issuance of false and/or
22 misleading statements, including the preparation of the false and/or misleading press releases and
23 SEC filings. Based on his knowledge of material non-public information regarding the Company,
24 defendant Possley violated Cal. Corp. Code §§25402 and 25502.5 by selling 110,250 shares of
25 Novellus stock for proceeds of nearly \$1.6 million during the Relevant Period.

26 48. Defendant Ann D. Rhoads has been a director of Novellus since 2003. Because of
27 Rhoads's positions, she knew the adverse non-public information about the business of Novellus,
28 as well as its finances, markets and present and future business prospects, via access to internal

1 corporate documents, conversations and connections with other corporate officers and employees,
2 attendance at Board meetings and committees thereof and via reports and other information
3 provided to her in connection therewith. During the Relevant Period, Rhoads participated in the
4 issuance of false and/or misleading statements, including the preparation of the false and/or
5 misleading press releases and SEC filings. As a member of the Audit Committee, defendant
6 Rhoads caused or allowed the dissemination of the improper public statements described herein.

7 49. Defendant William R. Spivey has been a director of Novellus since April 1998.
8 Because of Spivey's position, he knew the adverse non-public information about the business of
9 Novellus, as well as its finances, markets and present and future business prospects, via access to
10 internal corporate documents, conversations and connections with other corporate officers and
11 employees, attendance at Board meetings and committees thereof and via reports and other
12 information provided to him in connection therewith. During the Relevant Period, Spivey
13 participated in the issuance of false and/or misleading statements, including the preparation of the
14 false and/or misleading press releases and SEC filings. As a member of the Compensation and
15 Governance and Nominating Committees, defendant Spivey controlled the other Defendants'
16 stock option awards and caused or allowed the dissemination of the improper public statements
17 described herein. Based on his knowledge of material non-public information regarding the
18 Company, defendant Spivey violated Cal. Corp. Code §§25402 and 25502.5 by selling 37,800
19 shares of Novellus stock for proceeds of \$1.6 million during the Relevant Period.

20 50. Defendant Delbert A. Whitaker has been a director of Novellus since 2002.
21 Because of Whitaker's position, he knew the adverse non-public information about the business of
22 Novellus, as well as its finances, markets and present and future business prospects, via access to
23 internal corporate documents, conversations and connections with other corporate officers and
24 employees, attendance at Board meetings and committees thereof and via reports and other
25 information provided to him in connection therewith. During the Relevant Period, Whitaker
26 participated in the issuance of false and/or misleading statements, including the preparation of the
27 false and/or misleading press releases and SEC filings. As a member of the Audit, Compensation
28 and Governance and Nominating Committees, defendant Whitaker controlled the other

1 Defendants' stock option awards and caused or allowed the dissemination of the improper public
2 statements described herein.

3 51. Defendant D. James Guzy was a director at Novellus from 1990 until 2004.
4 Because of Guzy's position, he knew the adverse non-public information about the business of
5 Novellus, as well as its finances, markets and present and future business prospects, via access to
6 internal corporate documents, conversations and connections with other corporate officers and
7 employees, attendance at Board meetings and committees thereof and via reports and other
8 information provided to him in connection therewith. During his tenure at Novellus, Guzy served
9 on the Audit, Compensation, Stock Option, and Stock Option and Compensation Committees.⁵
10 As a member of these committees, defendant Guzy controlled the other Defendants' stock option
11 awards and caused or allowed the dissemination of the improper public statements described
12 herein. During the Relevant Period, Guzy participated in the issuance of false and/or misleading
13 statements, including the preparation of the false and/or misleading press releases and SEC filings.

14 52. Defendant Tom Long was a director at Novellus from 1995 until 2001. Because of
15 Long's position, he knew the adverse non-public information about the business of Novellus, as
16 well as its finances, markets and present and future business prospects, via access to internal
17 corporate documents, conversations and connections with other corporate officers and employees,
18 attendance at Board meetings and committees thereof and via reports and other information
19 provided to him in connection therewith. During his tenure at Novellus, Long served on the
20 Audit, Compensation, Stock Option, and Stock Option and Compensation Committees. As a
21 member of these committees, defendant Long controlled the other Defendants' stock option
22 awards and caused or allowed the dissemination of the improper public statements described
23 herein. During the Relevant Period, Long participated in the issuance of false and/or misleading
24 statements, including the preparation of the false and/or misleading press releases and SEC filings.

25
26
27 ⁵ The Stock Option Committee and the Compensation Committee combined into the Stock
28 Option and Compensation Committee in 1997.

1 53. Defendant Robert H. Smith was a director of Novellus from 1995 to 2002. In
2 1996, Smith became Executive Vice President for Finance and Administration, as well as CFO.
3 As CFO and EVP for Finance and Administration, Smith was heavily involved in the options
4 granting process at Novellus. Because of Smith's position, he knew the adverse non-public
5 information about the business of Novellus, as well as its finances, markets and present and future
6 business prospects, via access to internal corporate documents, conversations and connections
7 with other corporate officers and employees, attendance at Board meetings and committees
8 thereof and via reports and other information provided to him in connection therewith. During the
9 Relevant Period, Smith participated in the issuance of false and/or misleading statements,
10 including the preparation of the false and/or misleading press releases and SEC filings.

11 **DEFENDANTS WERE CONTROL PERSONS**
12 **WITH FIDUCIARY DUTIES TO NOVELLUS**

13 54. Each officer and director of Novellus named herein owed the Company and
14 Novellus shareholders the duty to exercise a high degree of care, loyalty and diligence in the
15 management and administration of the affairs of the Company, as well as in the use and
16 preservation of its property and assets. The conduct of Novellus' directors and officers
17 complained of herein involves knowing, intentional and culpable violations of their obligations as
18 officers and directors of Novellus. Further, the misconduct of Novellus' officers has been ratified
19 by Novellus' Board, which has failed to take any legal action on behalf of the Company against
20 them.

21 55. By reason of their positions as officers, directors and fiduciaries of Novellus, and
22 because of their ability to control the business and corporate affairs of the Company, the
23 Defendants owed Novellus and its shareholders fiduciary obligations of candor, trust, loyalty and
24 care, and were required to use their ability to control and manage Novellus in a fair, just, honest
25 and equitable manner, and to act in furtherance of the best interests of Novellus and its
26 shareholders so as to benefit all shareholders equally and not in furtherance of their personal
27 interest or benefit. In addition, as officers and/or directors of a publicly held company, the
28 Defendants had a duty to refrain from utilizing their control over Novellus to divert assets to

1 themselves via improper and/or unlawful practices. Defendants also had a duty to promptly
2 disseminate accurate and truthful information with respect to the Company's operations, earnings
3 and compensation practices.

4 56. Because of their positions of control and authority as directors or officers of
5 Novellus, each of the Defendants was able to and did, directly and indirectly, control the wrongful
6 acts complained of herein. As to the Director Defendants, these acts include: (i) agreement to
7 and/or acquiescence in Defendants' option backdating scheme; (ii) willingness to cause Novellus
8 to disseminate false Proxy Statements for 1997-2006, which Proxy Statements failed to disclose
9 Defendants' option backdating scheme and omitted the fact that executive officers were allowed
10 to backdate their stock option grants in order to manipulate the strike price of the stock options
11 they received. Because of their positions with Novellus, each of the Defendants was aware of
12 these wrongful acts, had access to adverse non-public information and was required to disclose
13 these facts promptly and accurately to Novellus shareholders and the financial markets but failed
14 to do so.

15 57. Between 1997 and 2006, Defendants repeated in each Proxy Statement that the
16 stock option grants made during that period carried an exercise price that was not less than the fair
17 market value of Novellus stock on the date granted, as calculated by the public trading price of the
18 stock at the market's close on that date. However, Defendants concealed that the stock option
19 grants were repeatedly and consciously backdated to ensure that the strike price associated with
20 the option grants was at or near the lowest trading price for that fiscal period. Due to Defendants'
21 breach of their fiduciary duty in the administration of the stock option plans, plaintiffs seek to
22 have the directors' and officers' plans voided and gains from those plans returned to the
23 Company. In the alternative, plaintiffs seek to have all of the unexercised options granted to
24 Defendants between 1997 and 2006 cancelled, the financial gains obtained via the exercise of
25 such options returned to the Company and to have Defendants revise the Company's financial
26 statements to reflect the truth concerning these option grants.

27 58. To discharge their duties, the directors of Novellus were required to exercise
28 reasonable and prudent supervision over the management, policies, practices and controls of the

1 business and financial affairs of Novellus. By virtue of such duties, the officers and directors of
2 Novellus were required, among other things, to:

3 (a) manage, conduct, supervise and direct the business affairs of Novellus in
4 accordance with all applicable law (including federal and state laws, government rules and
5 regulations and the charter and bylaws of Novellus);

6 (b) neither engage in self-dealing nor knowingly permit any officer, director or
7 employee of Novellus to engage in self-dealing;

8 (c) neither violate nor knowingly permit any officer, director or employee of
9 Novellus to violate applicable laws, rules and regulations;

10 (d) remain informed as to the status of Novellus' operations, including its
11 practices in relation to the cost of allowing the pervasive backdating and improperly accounting
12 for such, and upon receipt of notice or information of imprudent or unsound practices, to make a
13 reasonable inquiry in connection therewith, and to take steps to correct such conditions or
14 practices and make such disclosures as are necessary to comply with the U.S. federal securities
15 laws and their duty of candor to the Company's shareholders;

16 (e) prudently protect the Company's assets, including taking all necessary steps
17 to recover corporate assets (cash, stock options) improperly paid to Company executives and
18 directors together with the related costs (professional fees) proximately caused by the illegal
19 conduct described herein;

20 (f) establish and maintain systematic and accurate records and reports of the
21 business and affairs of Novellus and procedures for the reporting of the business and affairs to the
22 Board of Directors and to periodically investigate, or cause independent investigation to be made
23 of, said reports and records;

24 (g) maintain and implement an adequate, functioning system of internal legal,
25 financial and accounting controls, such that Novellus' financial statements – including its
26 expenses, accounting for stock option grants and other financial information – would be accurate
27 and the actions of its directors would be in accordance with all applicable laws;

1 (h) exercise control and supervision over the public statements to the securities
2 markets and trading in Novellus stock by the officers and employees of Novellus; and

3 (i) supervise the preparation and filing of any financial reports or other
4 information required by law from Novellus and to examine and evaluate any reports of
5 examinations, audits or other financial information concerning the financial affairs of Novellus
6 and to make full and accurate disclosure of all material facts concerning, *inter alia*, each of the
7 subjects and duties set forth above.

8 59. Each Defendant, by virtue of his or her position as a director and/or officer, owed
9 to the Company and to its shareholders the fiduciary duties of loyalty, good faith and the exercise
10 of due care and diligence in the management and administration of the affairs of the Company, as
11 well as in the use and preservation of its property and assets. The conduct of the Defendants
12 complained of herein involves a knowing and culpable violation of their obligations as directors
13 and/or officers of Novellus, the absence of good faith on their part, and a reckless disregard for
14 their duties to the Company and its shareholders which Defendants were aware or should have
15 been aware posed a risk of serious injury to the Company. The conduct of the Defendants who
16 were also officers and/or directors of the Company during the Relevant Period has been ratified by
17 the Director Defendants who comprised Novellus' Board during the Relevant Period.

18 60. Defendants breached their duties of loyalty and good faith by allowing or by
19 themselves causing the Company to misrepresent its financial results and prospects, as detailed
20 herein infra, and by failing to prevent the Defendants from taking such illegal actions. As a result,
21 Novellus has expended and will continue to expend significant sums of money. Such
22 expenditures include, but are not limited to:

23 (a) improvidently paid executive compensation;

24 (b) increased capital costs as a result of the loss of market capitalization and the
25 Company's damaged reputation in the investment community;

26 (c) costs incurred to carry out internal investigations, including legal fees paid
27 to outside counsel; and

28 (d) incurring possible IRS penalties for improperly reporting compensation.

1 61. These actions have irreparably damaged Novellus' corporate image and goodwill.
2 For at least the foreseeable future, Novellus will suffer from what is known as the "liar's
3 discount," a term applied to the stocks of companies who have been implicated in illegal behavior
4 and have misled the investing public, such that Novellus' ability to raise equity capital or debt on
5 favorable terms in the future is now impaired.

6 **AIDING AND ABETTING AND CONCERTED ACTION**

7 62. In committing the wrongful acts alleged herein, Defendants have pursued or joined
8 in the pursuit of a common course of conduct and acted in concert with one another in furtherance
9 of their common plan.

10 63. During all times relevant hereto, Defendants collectively and individually initiated
11 a course of conduct which was designed to and did: (i) conceal the fact that the Company was
12 allowing its directors and senior officers to divert hundreds of millions of dollars to Novellus
13 insiders and directors and causing Novellus to misrepresent its financial results; (ii) maintain
14 Defendants' executive and directorial positions at Novellus and the profits, power and prestige
15 which Defendants enjoyed as a result of these positions; (iii) deceive the investing public,
16 including shareholders of Novellus, regarding Defendants' compensation practices and Novellus'
17 financial performance.

18 64. The purpose and effect of Defendants' common course of conduct was, among
19 other things, to disguise Defendants' violations of law, breaches of fiduciary duty, abuse of
20 control, gross mismanagement, corporate waste and unjust enrichment, to conceal adverse
21 information concerning the Company's operation and financial condition and to artificially inflate
22 the price of Novellus common stock so they could dispose of millions of dollars of their own
23 Novellus stock, and enhance their executive and directorial positions and receive the substantial
24 compensation they obtained as a result thereof.

25 65. Defendants accomplished their common enterprise and/or common course of
26 conduct by causing the Company to purposefully and/or recklessly engage in the option
27 backdating scheme alleged herein and misrepresent Novellus' financial results. Each of the
28

1 Defendants was a direct, necessary, and substantial participant in the common enterprise and/or
2 common course of conduct complained of herein.

3 66. Each of the Defendants aided and abetted and rendered substantial assistance in
4 the wrongs complained of herein. In taking such actions to substantially assist the commission of
5 the wrongdoing complained of herein, each Defendant acted with knowledge of the primary
6 wrongdoing, substantially assisted the accomplishment of that wrongdoing, and was aware of his
7 or her overall contribution to and furtherance of the wrongdoing.

8 **FACTUAL ALLEGATIONS**

9 67. Nominal party Novellus is a California corporation with its principal executive
10 offices located at 4000 North First Street, San Jose, California. Novellus purports to be a leading
11 provider of advanced process equipment for the global semiconductor industry. Novellus
12 manufactures, markets and services advanced deposition, surface preparation and chemical
13 mechanical planarization equipment for advanced integrated circuits. Novellus is headquartered in
14 San Jose, CA. The company maintains engineering & manufacturing facilities both San Jose and
15 Tualatin, Oregon, and has sales and service operations in 16 countries around the world.

16 68. During the Relevant Period the Company's executives and its non-employee
17 directors were compensated in large part through the issuance of stock options. A stock option
18 granted to an employee and/or director of a corporation allows the employee and/or director to
19 purchase company stock at a specified price – referred to as the “exercise price” – for a specified
20 period of time. Stock options are granted as part of employee and/or director compensation
21 packages as a means to create incentives to boost profitability and stock value. When the
22 employee and/or director exercises the option, he or she purchases the stock from the company at
23 the exercise price, regardless of the stock's price at the time the option is exercised. If the
24 exercise price is lower than it should be, the employee and/or director pays less and the company
25 gets less when the stock option is exercised.

26 69. According to the Company, stock options are issued pursuant to Stock Option
27 Plans approved by Company shareholders and administered by the Company's Board and Stock
28 Option and Compensation Committee. Each of Novellus' reported Stock Option Plans provides

1 that the measurement of the exercise price of stock options was to be based on the fair market
2 value on the date the option was granted. *See, proxies, infra.*

3 70. Contrary to representations in public filings with the SEC and to Company
4 shareholders, the Individual Defendants manipulated stock options by falsifying or manipulating
5 documents evidencing stock option grant dates. Instead of stock options being priced in
6 accordance with the fair market value on the grant date of the options, the options were backdated
7 to – in most instances – reflect a date on which the fair market value of the stock was lower than
8 that of the date of the actual grant. In most instances, stock options were backdated to a date
9 where the fair market value of the stock was at its lowest during a relevant month or quarter. The
10 actual practice of granting stock options to Novellus officers and/or directors was contrary to the
11 terms of each of Novellus' Stock Option Plans. When the Novellus options were backdated to
12 lower their exercise price for the benefit of Company insiders, the salutary purpose of the Stock
13 Option Plans was undermined to the detriment of the Company and its shareholders, as the
14 recipients of the options received compensation regardless of whether they achieved the goals that
15 would otherwise be a prerequisite to their benefiting from such compensation.

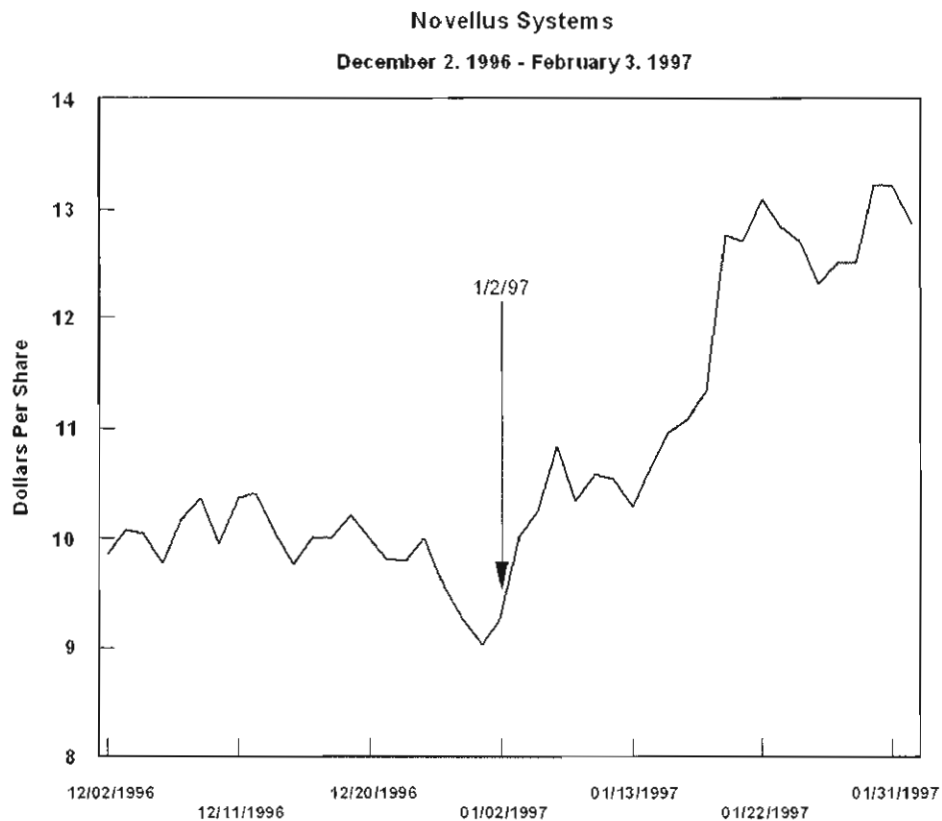
16 71. The backdating of options granted to Company insiders also brought an instant
17 paper gain to these insiders, as the options were priced below the stock's fair market value when
18 they were actually awarded. Under GAAP, this instant paper gain was equivalent to extra
19 compensation and, thus, represented a cost to Novellus. Because defendants caused Novellus to
20 omit quarterly and year-end costs associated with this extra compensation in its financial results,
21 its profits were overstated during the fiscal periods in which the options were granted.

22 **SUSPICIOUS GRANTS DURING THE RELEVANT PERIOD**

23 72. From at least 1997 until 2006, Defendants caused the Company to issue stock
24 options that were dated suspiciously to either coincide with the lowest trading price of the
25 Company's stock during the month in which they were granted, or to precede a significant rise in
26 Novellus' stock price.

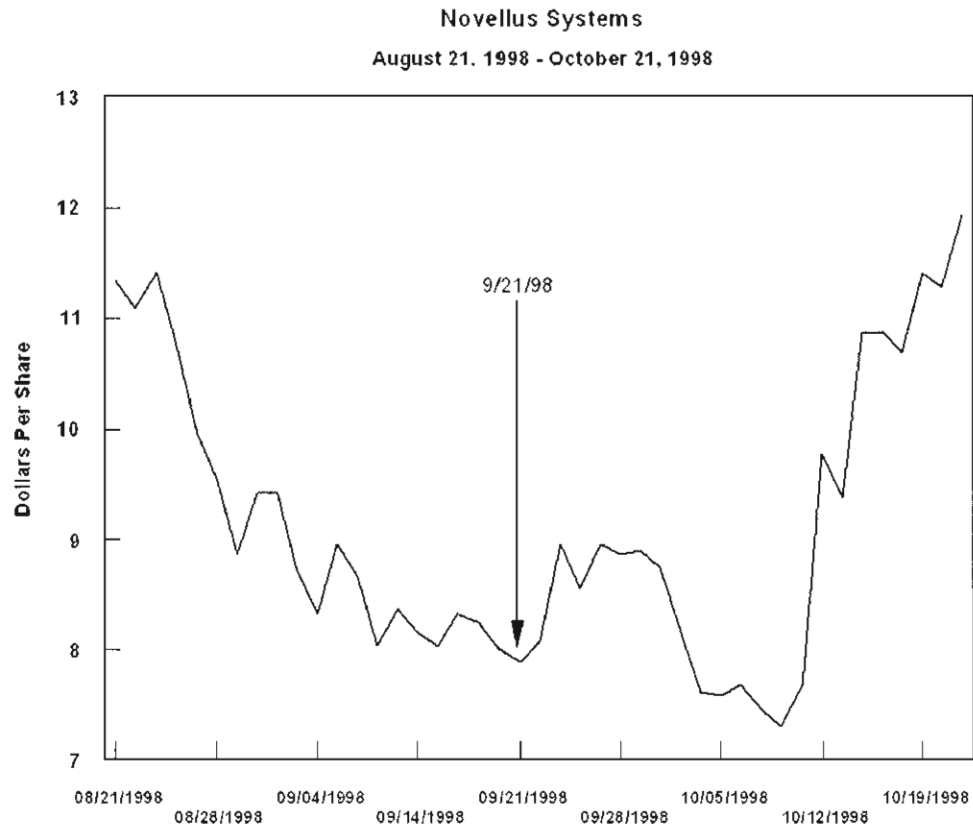
1997 Option Grants

73. Defendants dated many of Novellus' 1997 option grants as of January 2, 1997 at \$9.25 per share (adjusted for stock split) – the low of the month. The stock traded as high as \$13.23 per share in December. Defendant Hill received 100,000 options at this price. Moreover, the documentation surrounding this grant only authorizes the granting of 50,000 options to Hill and was signed well after the grant date. See ¶¶154-156.



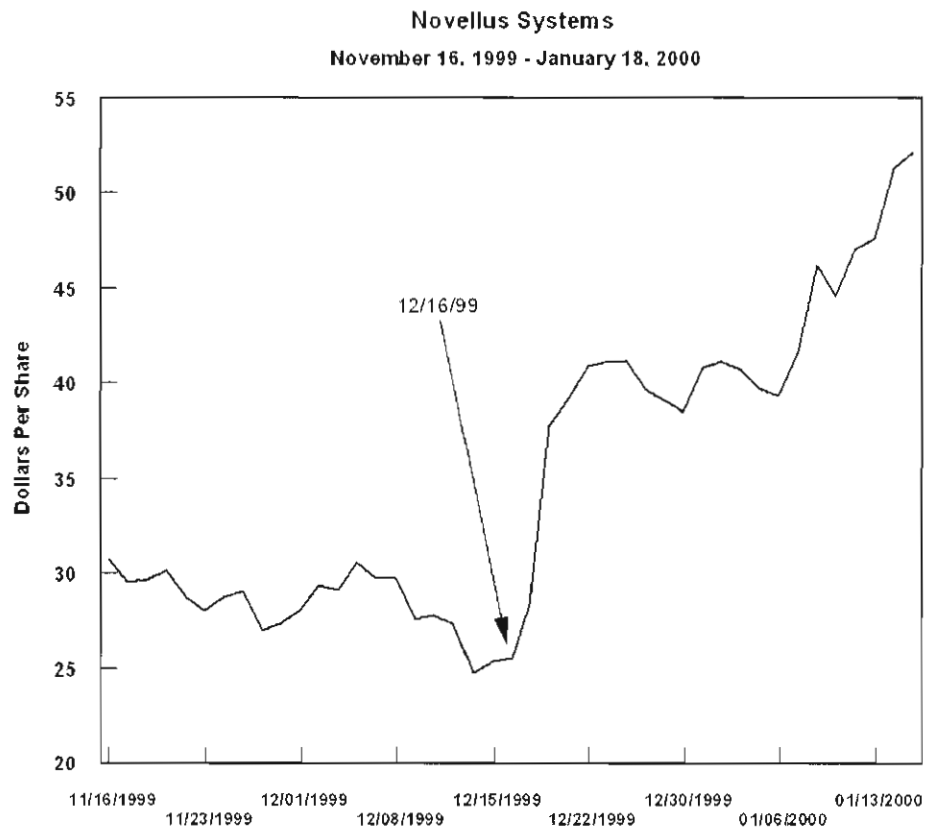
1998 Option Grants

74. Defendants dated Novellus' 1998 option grants at or near the low of the month in which the options were granted. Defendants dated many of Novellus' grants as of September 21, 1998 at \$7.90 per share (adjusted for stock split) – the low of the month. The stock traded as high as \$9.42 per share in September. Defendant Hill received 92,000 options at this price. *See* ¶158. Defendants also dated many of Novellus' grants as of December 17, 1998 at \$16.42 per share (adjusted for stock split) – nearly the low of the month when the stock traded between \$15.88 and \$19.31 per share. Defendant Benzing received 50,000 options at this price. Former CFO Smith, former President Peter Hanley ("Hanley") and EVP John A. Chenault ("Chenault") received 45,000, 40,000 and 60,000 options, respectively, at this price.



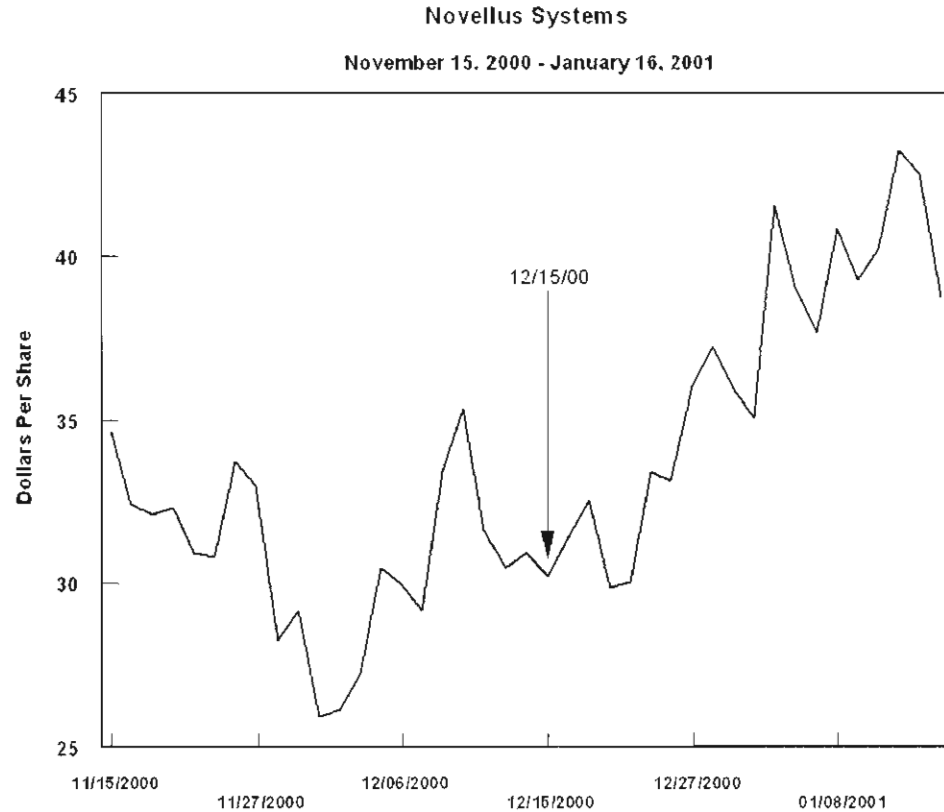
1999 Option Grants

75. Defendants dated Novellus' 1999 option grants at or near the low of the month in which the options were granted. Defendants dated some of Novellus' grants as of January 4, 1999 at \$17.33 per share – the low of the month. The stock traded as high as \$24.79 per share in January. Defendant Hill received 56,250 options at this price. *See* ¶159. Defendants also dated some of Novellus' grants as of August 19, 1999 at \$19.15 per share – nearly the low of the month when the stock traded between \$18.14 and \$22.00 per share. Former executive Chenault received 79,500 options at this price. Defendants further dated many of Novellus' grants as of December 16, 1999 at \$25.56 per share – nearly the low of the month when the stock traded between \$24.83 and \$41.21 per share. Defendant Benzing received 120,000 options at this price. Former executives Smith and Hanley received 135,000 and 120,000 options, respectively, at this price.



2000 Option Grants

76. Defendants dated Novellus' 2000 option grants on December 15, 2000 at \$30.25 per share. This grant, like many of Defendants' other grants, occurred right before a large increase in Novellus' stock price. By January 17, 2001 – 20 trading days out – the stock had closed at \$44.38 per share, a sharp increase of 47%. Defendant Hill received 300,000 options at this price. Former executives Smith, Hanley, Chenault and William van den Hoek ("van den Hoek"), an EVP of Novellus, received 145,280, 159,800, 94,400 and 106,700 options, respectively, at this price.



Novellus Sought and Received Shareholder Approval Through the Issuance of False and Misleading Proxy Statements

77. Throughout the Relevant Period, Novellus filed proxy statements with the SEC that contained false and misleading statements about the Company's stock option plans.

78. At the time that the following proxy statements were filed, the members of the Board of Directors, and particularly the members of the Stock Option Committee, knew or should have known that the disclosures in the proxy statements regarding stock option compensation and practices were false and misleading as they failed to disclose that stock options were, in many cases, backdated.

Novellus' False Proxy Statement

79. On or around April 18, 1995 Novellus filed a Form 14A Proxy Statement with the SEC. In its 1995 Proxy Statement, the Board stated that "[t]he Stock Option Committee administers the issuance of stock and the grant of options to purchase stock of the Company pursuant to the Company's stock plans and, in accordance with the terms of the respective stock plans, determines the terms and conditions of such issuances and grants."

80. The Board further described the exercise price of stock option grants as being equal to the fair market value of the Company stock on the date of the grant:

"[t]he exercise price of all stock options granted under the Option Plan must equal at least the fair market value of the Common Stock of the Company on the date of grant. The fair market value of the Common Stock on a given date is determined by the Board of Directors based upon the last sale price of the Common Stock on the Nasdaq National Market System as of such date."

Novellus' False Proxy Statement

81. On or around April 22, 1996 Novellus filed a Form 14A Proxy Statement with the SEC. In its 1996 Proxy Statement, the Board stated that "[t]he Stock Option Committee [consisting of Guzy, Long, Smith and Poppelen] administers the issuance of stock and the grant of options to purchase stock of the Company pursuant to the Company's stock plans and, in accordance with the terms of the respective stock plans, determines the terms and conditions of such issuances and grants." The Board further stated that, "[t]he exercise price of all stock options granted under the [1992 Stock] Option Plan must equal at least the fair market value of the

Common Stock of the Company on the date of grant. The fair market value of the Common Stock on a given date is determined by the Board of Directors based upon the last sale price of the Common Stock on the Nasdaq National Market System as of such date.”

82. In the same Proxy Statement, the Board assured shareholders that no action could be taken to reduce the exercise price of an option without shareholder approval:

“[i]n March of 1996 the Board approved an amendment to the Option Plan which provides that the Stock Option Committee may not, without further approval of the shareholders of the Company, authorize the amendment of any outstanding option to reduce the option price or authorize the amendment of any outstanding stock appreciation right (“SAR”) to reduce the base price.”

83. Finally, with respect to Defendants’ Section 16(a) compliance, the Board stated that “Mr. Robert Graham [“Graham”], Chairman of the Board, and Mr. Richard S. Hill, President and Chief Executive Officer, each filed one late Form 4 with respect to one transaction.”⁶

Novellus’ False 1997 Proxy Statement

84. On or around April 22, 1997 Novellus filed a Form 14A Proxy Statement with the SEC. In its 1997 Proxy Statement, the Board stated that the Stock Option Committee administers the issuance of stock and the grant of options to purchase stock of the Company pursuant to the Company’s stock plans and, in accordance with the terms of the respective stock plans, determines the terms and conditions of such issuances and grants.

85. The Board again stated that “[t]he exercise price of all stock options granted under the [1992 Stock] Option Plan *must equal at least the fair market value of the Common Stock of the Company on the date of grant*. The fair market value of the Common Stock on a given date is determined by the Board of Directors based upon the last sale price of the Common Stock on the Nasdaq National Market System as of such date.”

86. Regarding Defendants’ Section 16(a) compliance, the Board stated that Mr. Robert Wagner filed one late Form 4.

⁶ Several studies of potential options backdating have noted that the late filing on Form 4’s can help facilitate backdating. Moreover, Novellus’ October 19, 2006 statement that Novellus “always” filed its financial reports on time apparently did not take into account these late filings.

87. The Board further described the duties of the Stock Option Committee of the Board of Directors and the responsibilities concerning stock option issuances and adherence to the terms of the stock option plan:

[T]he Option Plan currently is administered by the Stock Option Committee of the Board of Directors (the "Stock Option Committee"), which, subject to the terms of the Option Plan, determines the terms of the options granted under the Option Plan, including the exercise price, the number of shares subject to the option and exercisability.

* * *

The exercise price of all stock options granted under the Option Plan must equal at least the fair market value of the Common Stock of the Company on the date of grant. The fair market value of the Common Stock on a given date is determined by the Board of Directors based upon the last sale price of the Common Stock on the Nasdaq National Market System as of such date.

Novellus' False 1998 Proxy Statement

88. On or around April 14, 1998 Novellus filed a Form 14A Proxy Statement with the SEC. In its 1998 Proxy Statement, the Board stated that "[t]he Stock Option Committee administers the issuance of stock and the grant of options to purchase stock of the Company pursuant to the Company's stock plans and, in accordance with the terms of the respective stock plans, determines the terms and conditions of such issuances and grants." The Board further assured that stock option grants were equal to the fair market value of the stock on the date of the grant:

The exercise price of all stock options granted under the Option Plan must equal at least the fair market value of the Common Stock of the Company on the date of grant. The fair market value of the Common Stock on a given date is determined by the Board of Directors based upon the last sale price of the Common Stock on the Nasdaq National Market System as of such date.

Novellus' False 1999 Proxy Statement

89. On or around April 7, 1999 Novellus filed a Form 14A Proxy Statement with the SEC. In its 1999 Proxy Statement, the Board stated that "[t]he Stock Option and Compensation Committee administers the issuance of stock and the granting of options to purchase stock of the Company pursuant to the Company's stock plans and, in accordance with the terms of the respective stock plans, determines the terms and conditions of such issuances and grants. In addition, it reviews and approves the Company's executive compensation policy."

1 90. Further, the Board stated that “the exercise price of all stock options granted under
2 the [1992 Stock] Option Plan *must equal at least the fair market value of the Common Stock of*
3 *the Company on the date of grant.* The fair market value of the Common Stock on a given date
4 is determined by the Board of Directors based upon the last sale price of the Common Stock on
5 the Nasdaq National Market System as of such date.”

6 91. The Board also stated that in connection with the 1992 Stock Option Plan, “[i]n the
7 case of a Nonstatutory Stock Option . . . granted to a Named Executive, the per share *exercise*
8 *price shall be no less than 100% of the Fair Market Value per Share on the date of grant.*”

9 **Novellus’ False 2000 Proxy Statement**

10 92. On or around April 7, 2000 Novellus filed a Form 14A Proxy Statement with the
11 SEC. In its 2000 Proxy Statement, the Board stated that “[t]he Stock Option and Compensation
12 Committee administers the issuance of stock and the granting of options to purchase stock of the
13 Company pursuant to the Company’s stock plans and, in accordance with the terms of the
14 respective stock plans, determines the terms and conditions of such issuances and grants. In
15 addition, it reviews and approves the Company’s executive compensation policy.”

16 93. Further, the Board further stated that “[t]he exercise price of all stock options
17 granted under the [1992 Stock] Option Plan must equal at least the fair market value of the
18 Common Stock of the Company on the date of grant. The fair market value of the Common Stock
19 on a given date is determined by the Board of Directors based upon the last sale price of the
20 Common Stock on the Nasdaq National Market System as of such date.”

21 **Novellus’ False 2001 Proxy Statement**

22 94. On or around April 11, 2001 Novellus filed a Form 14A Proxy Statement with the
23 SEC. In its 2001 Proxy Statement, the Board stated that “The Stock Option and Compensation
24 Committee administers the issuance of stock and the granting of options to purchase stock of the
25 Company pursuant to the Company’s stock plans and, in accordance with the terms of the
26 respective stock plans, determines the terms and conditions of such issuances and grants. In
27 addition, it reviews and approves the Company’s executive compensation policy.” The 2001
28 Proxy Statement also stated that the Plan authorizes the Administrator to grant awards at an

1 exercise price determined by the Administrator, however, such price must not be less than one
2 hundred percent (100%) (or one hundred ten percent (110%), in the case of Incentive Stock
3 Options granted to any Grantee who owns stock representing more than ten percent (10%) of the
4 combined voting power of the Company or any Parent or Subsidiary of the Company) of the Fair
5 Market Value of the Common Stock on the date the Option is granted.

6 **Novellus' False 2002 Proxy Statement**

7 95. On or around April 9, 2002 Novellus filed a Form 14A Proxy Statement with the
8 SEC. In its 2002 Proxy Statement, the Board stated that "The Stock Option and Compensation
9 Committee administers the issuance of stock and the granting of options to purchase stock of the
10 Company pursuant to the Company's stock plans and, in accordance with the terms of the
11 respective stock plans, determines the terms and conditions of such issuances and grants. In
12 addition, it reviews and approves the Company's executive compensation policy."

13 **Novellus' False 2003 Proxy Statement**

14 96. On or around March 7, 2003, Novellus filed a Form 14A Proxy Statement with the
15 SEC. In its 2003 Proxy Statement, the Board stated that "*stock options issued under the 2001*
16 *Plan shall have an exercise price of not less than 100% of the fair market value of the Common*
17 *Stock on the date of grant of the option.*" The Board further stated that "[s]tock options shall be
18 issued under the 2001 Non-Qualified Plan with an exercise price of not less than 100% of the fair
19 market value of the Common Stock on the date of grant of the option."

20 **Novellus' False 2004 Proxy Statement**

21 97. On or around March 12, 2004, Novellus filed a Form 14A Proxy Statement with
22 the SEC. In its 2004 Proxy Statement, the Board stated that "*stock options issued under the 2001*
23 *Plan shall have an exercise price of not less than 100% of the fair market value of the Common*
24 *Stock on the date of grant of the option.*" The Board further stated that "[s]tock options shall be
25 issued under the 2001 Non-Qualified Plan with an exercise price of not less than 100% of the fair
26 market value of the Common Stock on the date of grant of the option."

Novellus' False 2005 Proxy Statement

98. On or around March 17, 2005, Novellus filed a Form 14A Proxy Statement with the SEC. In its 2005 Proxy Statement, the Board stated that "[t]he stock options issued under the 2001 Plan have an exercise price of not less than 100% of the fair market value of the Common Stock on the date of grant of the option." The Board further stated that "stock options shall be issued under the 2001 Non-Qualified Plan with an exercise price of not less than 100% of the fair market value of the Common Stock on the date of grant of the option."

Novellus' False 2006 Proxy Statement

99. On or around April 17, 2006, Novellus filed a Form 14A Proxy Statement with the SEC. In its 2006 Proxy Statement, the Board made the following representations about the administration of the Company's stock option plan:

The Board of Directors and the Stock Option and Compensation Committee believe that stock option grants are inherently performance-based, since their eventual value to the recipient is directly linked to Novellus' stock price, which is largely driven by company performance. The option grants awarded in recent years vest ratably over a four-year period from the date of grant. For any value to be derived from an option grant, Novellus' performance needs to be at a level that, in comparison to the industry and the overall stock market, continues to drive increased stock price performance and shareholder value over a period of years. *If the price of Novellus' stock does not exceed the grant price before the option's term expires, the option will become worthless.* In addition, restricted stock awards may be designed to be performance-based, if shares are forfeited when a performance target is not met after a specific period of time.

100. In describing the Company's 2001 Stock Incentive Plan, the Board stated that "[t]he stock options issued under the 2001 Plan have an exercise price of not less than 100% of the fair market value of the Common Stock on the date of grant of the option."

101. In describing the Company's 2001 Non-Qualified Stock Option Plan, the Board stated that "stock options shall be issued under the 2001 Non-Qualified Plan with an exercise price of not less than 100% of the fair market value of the Common Stock on the date of grant of the option."

NOVELLUS' FALSE FINANCIAL REPORTING IN VIOLATION OF GAAP

102. As a result of Defendants' improper backdating of stock options, Defendants caused Novellus to violate GAAP, SEC regulations and IRS rules and regulations.

1 103. Novellus' financial results for 1996-2006 were included in reports filed with the
2 SEC and in other shareholder reports. In these reports, defendants represented that Novellus'
3 financial results were presented in a fair manner and in accordance with GAAP.

4 104. Defendants' representations were false and misleading as to the financial
5 information reported, as such financial information was not prepared in conformity with GAAP,
6 nor was the financial information "a fair presentation" of the Company's financial condition and
7 operations, causing the financial results to be presented in violation of GAAP and SEC rules.

8 105. GAAP consists of those principles recognized by the accounting profession as the
9 conventions, rules, and procedures necessary to define accepted accounting practice at the
10 particular time. Regulation S-X, to which the Company is subject as a registrant under the
11 Exchange Act, 17 C.F.R. §210.4-01(a)(1), provides that financial statements filed with the SEC
12 which are not prepared in compliance with GAAP, are presumed to be misleading and inaccurate.

13 **Violations of GAAP**

14 106. During the Relevant Period, Defendants caused the Company to understate its
15 compensation expense by not properly accounting for its stock options under GAAP and thus
16 overstated the Company's net earnings.

17 107. Under well-settled accounting principles in effect throughout the Relevant Period,
18 Novellus did not need to record an expense for options granted to employees at the then-current
19 market price ("at the money"). The Company was, however, required to record an expense in its
20 financial statements for any options granted below the then-current market price ("in the money").
21 In order to provide Novellus executives and employees with far more lucrative "in the money"
22 options, while avoiding having to inform shareholders about millions of dollars incurred by the
23 Company in compensation expenses (and without paying the IRS millions of dollars in
24 employment taxes), defendants systematically falsified Company records to create the false
25 appearance that options had been granted at the market price on an earlier date.

26 108. Throughout the Relevant Period, Novellus accounted for stock options using the
27 intrinsic method described in Accounting Principles Board Opinion ("APB") No. 25, "Accounting
28 for Stock Issued to Employees." Under APB No. 25, employers were required to record as an

1 expense on their financial statements the “intrinsic value” of a fixed stock option on its
 2 “measurement date.” An option that is “in the money” on the measurement date has intrinsic
 3 value, and the difference between its exercise price and the quoted market price must be recorded
 4 as compensation expense to be recognized over the vesting period of the option. Options that are
 5 “at the money” or “out of the money” on the measurement date need not be expensed. Excluding
 6 non-employee directors, APB No. 25 required employers to record compensation expenses on
 7 options granted to non-employees irrespective of whether they were “in the money” or not on the
 8 date of grant.

9 **Novellus’ GAAP Violations Were Material**

10 109. Novellus’ false and misleading Relevant Period statements and omissions
 11 regarding its accounting were material, particularly in light of SEC guidance on materiality. SEC
 12 Staff Accounting Bulletin (“SAB”) Topic 1M, “Materiality,” summarizes GAAP definitions of
 13 materiality. Among other items, SAB Topic 1M says: “A matter is ‘material’ if there is a
 14 substantial likelihood that a reasonable person would consider it important.” It also stresses that
 15 materiality requires qualitative, as well as quantitative, considerations. For example, if a known
 16 misstatement would cause a significant market reaction that reaction should be taken into account
 17 in determining the materiality of the misstatement.

18 **SAB Topic 1M further states:**

19 Among the considerations that may well render material a quantitatively
 20 small misstatement of a financial statement item are –

21 * * *

- 22 • whether the misstatement masks a change in earnings or other trends
- 23 • whether the misstatement hides a failure to meet analysts’ consensus expectations for the enterprise

24 * * *

- 25 • whether the misstatement concerns a segment or other portion of the registrant’s business that has been identified as playing a significant role in the registrant’s operations or profitability.

26
 27 110. SAB Topic 1M also says that an intentional misstatement of even immaterial items
 28 may be illegal and constitute fraudulent financial reporting.

1 Novellus' Financial Statements Violated Fundamental Concepts of GAAP

2 111. Due to these accounting improprieties, the Company presented its financial results
3 and statements in a manner that violated GAAP, which are described by the following statements:

4 (a) The principle that interim financial reporting should be based upon the
5 same accounting principles and practices used to prepare annual financial statements (APB No.
6 28, 10);

7 (b) The principle that financial reporting should provide information that is
8 useful to existing and potential investors and creditors and other users in making rational
9 investment, credit and similar decisions (Financial Accounting Standards Board ("FASB")
10 Statement of Concepts No. 1, 34);

11 (c) The principle that financial reporting should provide information about the
12 economic resources of an enterprise, the claims to those resources, and the effects of transactions,
13 events and circumstances that change resources and claims to those resources (FASB Statement of
14 Concepts No. 1, 40);

15 (d) The principle that financial reporting should provide information about how
16 management of an enterprise has discharged its stewardship responsibility to stockholders for the
17 use of enterprise resources entrusted to it. To the extent that management offers securities of the
18 enterprise to the public, it voluntarily accepts wider responsibilities for accountability to
19 prospective investors and to the public in general (FASB Statement of Concepts No. 1, 50);

20 (e) The principle that financial reporting should be reliable in that it represents
21 what it purports to represent (FASB Statement of Concepts No. 2, 58-59);

22 (f) The principle of completeness, which means that nothing material is left out
23 of the information that may be necessary to insure that it validly represents underlying events and
24 conditions (FASB Statement of Concepts No. 2, 79); and

25 (g) The principle that conservatism be used as a prudent reaction to uncertainty
26 to try to ensure that uncertainties and risks inherent in business situations are adequately
27 considered (FASB Statement of Concepts No. 2, 95, 97).

1 112. Further, the undisclosed adverse information concealed by defendants during the
2 Relevant Period is the type of information which, because of SEC regulations, regulations of the
3 national stock exchanges and customary business practice, is expected by investors and securities
4 analysts to be disclosed, and is known by corporate officials and their legal and financial advisors
5 to be the type of information which is expected to be and must be disclosed.

6 **Violations of the SEC Regulations**

7 113. During the Relevant Period, Defendants caused Novellus to violate SEC
8 regulations by failing to disclose that the Company's senior executives had been granted
9 backdated stock options.

10 114. Under SEC Regulations, Item 8 of Form 14-A and Item 11 of Form 10-K, an issuer
11 must furnish information required by Item 402 of Regulation S-K [17 C.F.R. §229.303]. Item
12 402(b) and (c) require a company to provide both a Summary Compensation Table and an
13 Option/SAR Grants Table identifying the compensation of the named executive officers – the
14 Company's CEO and its next four most highly paid executives. Item 402 requires particularized
15 disclosures involving a company's stock option grants in the last fiscal year. In the summary
16 compensation table, the issuer must identify in a column "other annual compensation" received by
17 the named executives that is not properly categorized as salary or bonus, including any "[a]bove
18 market or preferential earnings on restricted stock, options, SARs or deferred compensation" paid
19 to the officer during the period. Item 402(b)(2)(iii)(C)(2). In the option grant table, the issuer
20 must identify in a column "[t]he per-share exercise or base price of the options If such
21 exercise or base price is less than the market price of the underlying security on the date of grant,
22 a separate, adjoining column shall be added showing market price on the date of grant." Item
23 402(c)(2)(iv).

24 115. Defendants caused Novellus to violate SEC regulations by failing to disclose that
25 the Company's named executive officers had been granted options with exercise prices below the
26 market value on the date the Board or Compensation Committee approved the grant.

Violations of IRS Rules and Regulations

116. During the Relevant Period, defendants further caused Novellus to violate IRS rules and regulations due to its improper accounting for the backdated stock options. As a result, the Company's tax liabilities were understated exposing Novellus to potential amounts owed for back taxes, penalties and interest to the IRS for improperly reporting compensation.

117. Defendants caused the Company to violate IRS Code §162(m) which generally limits a publicly traded company's tax deductions for compensation paid to each of its named executive officers to \$1 million unless the pay is determined to be "performance-based." In order for compensation to be performance-based, the Compensation Committee must have set pre-established and objective performance goals. The goals must then be approved by the shareholders. Section 162(m) defines stock options as performance-based provided they are issued at an exercise price that is no less than the fair market value of the stock on the date of the grant. Accordingly, properly issued stock options do not have to be taken into account in calculating whether an executive's compensation has exceeded the \$1 million compensation cap.

118. Section 162(m), known as the \$1 million rule, was enacted in 1993 in order to tie top executives' soaring pay packages more closely to a company's performance. This change in the tax law turned compensation practices for a company's top executives away from straight salary-based compensation to performance-based compensation, including stock options. According to former SEC Chairman Harvey Pitt: "What [162(m)] did was create incentives to find other forms of compensation so people could get over the \$1 million threshold without running afoul of the code."

119. Defendants caused Novellus to violate IRS Code §162(m) by providing backdated options to the Company's named executive officers which were granted with exercise prices that were less than the fair market value of the stock on the date of the grant. As a result all of the income resulting from the exercise of the options must be included for purposes of calculating whether the named executive's compensation exceeds the \$1 million cap for federal tax purposes.

120. Defendants further caused the Company to violate IRS rules and regulations in order to avoid having to withhold income and FICA tax from its executives and employees upon

1 the exercise of Novellus' stock options by improperly accounting for its Non-qualified Stock
2 Options ("NQSOs") as Incentive Stock Options ("ISOs").

3 121. ISOs are a form of equity compensation that may be provided to a company's
4 employees. ISOs are required to be granted at an exercise price that is no less than the fair market
5 value of the stock on the date of the grant and are entitled to preferential tax treatment as they are
6 not subject to income tax upon exercise of the options but only upon sale of the stock (except for
7 the possible imposition of alternative minimum tax on the option spread at the time of exercise).
8 Stock options that do not qualify as ISOs are considered to be NQSOs. NQSOs are not entitled to
9 preferential treatment as they are subject to income tax and FICA withholding upon exercise. As
10 a result, a company that fails to withhold income tax and/or FICA upon the exercise of NQSOs by
11 its employees would be liable for the amount of the income tax and FICA that the company failed
12 to withhold upon exercise of the options, in addition to interest and penalties.

13 122. By improperly treating its backdated options as ISOs, defendants failed to provide
14 proper income tax and FICA withholdings upon the exercise of its options by its executives and
15 employees in violation of IRS rules and regulations.

16 123. The chart below illustrates Novellus' false and misleading fiscal year financial
17 results which materially understated its compensation expenses and thus overstated its earnings
18 due to improper backdating of stock options:

FISCAL YEAR	REPORTED EARNINGS (LOSS) (in thousands)	REPORTED BASIC EARNINGS (LOSS) PER SHARE
1995	\$82,543	\$4.82
1996	\$94,029	\$5.70
1997	\$(95,658)	\$(0.96)
1998	\$52,828	\$0.50
1999	76,574	\$0.64
2000	\$151,065	\$1.12
2001	\$144,470	\$0.97
2002	\$22,920	\$0.15
2003	\$(67,814)	\$(0.45)
2004	\$156,690	\$1.06
2005	\$110,107	\$0.80

Novellus' Form 10-K Filings for the Relevant Period Were False and Misleading

124. Throughout the Relevant Period, the members of the Novellus Board of Directors either knew, or should have known, that Novellus was filing false and misleading Forms 10-K with the SEC. The Forms 10-K included false financial statements and misrepresented the options granting practices at Novellus.

The 1995 Form 10-K

125. On or about March 20, 1996, the Company filed its 1995 Form 10-K with the SEC. The 1995 Form 10-K was signed by Hill, Wall, Graham, Guzy, Long, Possley, Smith and Van Poppelen. The 1995 Form 10-K was simultaneously distributed to shareholders and the public. The 1995 Form 10-K included Novellus' 1995 financial statements which were materially false and misleading and presented in violation of GAAP, due to improper accounting for the backdated stock options. The Company also stated that it accounts for its stock option plans and its employee stock purchase plan in accordance with provisions of APB No. 25. As a result, Novellus' compensation expense was understated and its net earnings were overstated.

The 1996 Form 10-K

126. On or about March 20, 1997, the Company filed its 1996 Form 10-K with the SEC. The 10-K was signed by Hill, Wall, Graham, Long, Possley, Smith and Van Poppelen. The 1996 Form 10-K was simultaneously distributed to shareholders and the public. The 1996 Form 10-K included Novellus' 1996 financial statements which were materially false and misleading and presented in violation of GAAP, due to improper accounting for the backdated stock options. The Company also stated that it accounts for its stock option plans and its employee stock purchase plan in accordance with provisions of APB No. 25. As a result, Novellus' compensation expense was understated and its net earnings were overstated.

The 1997 Form 10-K

127. On or about March 9, 1998, the Company filed its 1997 Form 10-K with the SEC. The 1998 Form 10-K was signed by Hill, Smith, Guzy, Long, Possley, Litster, and Spivey. The 1997 Form 10-K was simultaneously distributed to shareholders and the public. The 10-K was signed by Hill, Wall, Graham, Long, Possley, Smith and Van Poppelen. The 1997 Form 10-K

1 included Novellus' 1997 financial statements which were materially false and misleading and
2 presented in violation of GAAP, due to improper accounting for the backdated stock options. The
3 Company also stated that it accounts for its stock option plans and its employee stock purchase
4 plan in accordance with provisions of APB No. 25. As a result, Novellus' compensation expense
5 was understated and its net earnings were overstated.

6 **The 1998 Form 10-K**

7 128. On or about March 10, 1999, the Company filed its 1998 Form 10-K with the SEC.
8 The 1998 Form 10-K was simultaneously distributed to shareholders and the public. The 1998
9 Form 10-K included Novellus' 1998 financial statements which were materially false and
10 misleading and presented in violation of GAAP, due to improper accounting for the backdated
11 stock options. The Company also stated that it accounts for its stock option plans and its
12 employee stock purchase plan in accordance with provisions of APB No. 25. As a result,
13 Novellus' compensation expense was understated and its net earnings were overstated.

14 **The 1999 Form 10-K**

15 129. On or about March 30, 2000, the Company filed its 1999 Form 10-K with the SEC.
16 The 1999 Form 10-K was simultaneously distributed to shareholders and the public. The 1999
17 Form 10-K included Novellus' 1999 financial statements which were materially false and
18 misleading and presented in violation of GAAP, due to improper accounting for the backdated
19 stock options. The Company also stated that it accounts for its stock option plans and its
20 employee stock purchase plan in accordance with provisions of APB No. 25. As a result,
21 Novellus' compensation expense was understated and its net earnings were overstated. As a
22 result, Novellus' compensation expense was understated and its net earnings were overstated.

23 130. The 1999 Form 10K made the following false and misleading statement:

24 Employee Stock Option Plans. The Company grants options to employees under
25 the 1984 and 1992 Stock Option Plans ("the Plans"). Under the Plans, options to
26 purchase up to 16.2 million shares of the Company's *common stock may be
granted at not less than fair market value.*

27 The Form 10-K405 was signed by Smith, Michael Dodson, Hill, Guzy, Long, Possley,
28 Litster and Spivey.

The 2000 Form 10-K

131. On or about March 23, 2001, the Company filed its 2000 Form 10-K with the SEC. The 2000 Form 10-K was signed by Hill, Smith, Royal, Guzy, Long, Possley, Litster, and Spivey. The 2000 Form 10-K was simultaneously distributed to shareholders and the public. The 2000 Form 10-K included Novellus' 2000 financial statements which were materially false and misleading and presented in violation of GAAP, due to improper accounting for the backdated stock options. The Company also stated that it accounts for its stock option plans and its employee stock purchase plan in accordance with provisions of APB No. 25. As a result, Novellus' compensation expense was understated and its net earnings were overstated.

132. The 2001 Form 10K made the following false and misleading statement:

Employee Stock Option Plans. Novellus grants options to employees under the 1992 Stock Option Plan (the "Plan"). Under the Plan, options *to purchase up to 33.3 million shares of Novellus common stock may be granted at not less than fair market value.*

The 2001 Form 10-K

133. On or about March 21, 2002, the Company filed its 2001 Form 10-K with the SEC. The 2001 Form 10-K was simultaneously distributed to shareholders and the public. The 2001 Form 10-K included Novellus' 2001 financial statements which were materially false and misleading and presented in violation of GAAP, due to improper accounting for the backdated stock options. The Company also stated that it accounts for its stock option plans and its employee stock purchase plan in accordance with provisions of APB No. 25. As a result, Novellus' compensation expense was understated and its net earnings were overstated.

The Form 10-K was signed by Hill, Smith, Kevin S. Royal ("Royal"), Guzy, Long, Litster, Spivey and Possley.

The 2002 Form 10-K

134. On or about March 5, 2003, the Company filed its 2002 Form 10-K with the SEC. The 2002 Form 10-K was signed by Hill, Royal, Guzy, Possley, Litster, Spivey, Whitaker, Rhoads, and Nishi. The 2002 Form 10-K was simultaneously distributed to shareholders and the public. The 2002 Form 10-K included Novellus' 2002 financial statements which were materially

1 false and misleading and presented in violation of GAAP, due to improper accounting for the
2 backdated stock options. As a result, Novellus' compensation expense was understated and its net
3 earnings were overstated.

4 135. The 2003 Form 10K made the following false and misleading statements:

5 Employee Stock Option Plans. Novellus grants options to employees under the
6 1992 Stock Option Plan (the "Plan"). Under the Plan, options *to purchase up to*
7 *33.3 million shares of Novellus common stock may be granted at not less than*
8 *fair market value.*

9 **The 2003 Form 10-K**

10 136. On or about March 12, 2004, the Company filed its 2003 Form 10-K with the SEC.
11 The 2003 Form 10-K was simultaneously distributed to shareholders and the public. The 2003
12 Form 10-K included Novellus' 2003 financial statements which were materially false and
13 misleading and presented in violation of GAAP, due to improper accounting for the backdated
14 stock options. The Company also stated that it accounts for its stock option plans and its
15 employee stock purchase plan in accordance with provisions of APB No. 25. As a result,
16 Novellus' compensation expense was understated and its net earnings were overstated.

17 137. The 2003 Form 10K made the following false and misleading statements:

18 We grant options to employees under several stock option plans. Under the 1992
19 Stock Option Plan, which expired in fiscal 2002, options to purchase up to 33.3
20 million shares of Novellus common stock were made available *for grant at not*
21 *less than fair market value.*

22 The Form 10-K was signed by Hill, Royal, Guzy, Litster, Nishi, Possley, Spivey, Rhoades
23 and Whitaker.

24 **The 2004 Form 10-K**

25 138. On or about March 15, 2005, the Company filed its 2004 Form 10-K with the SEC.
26 The 2004 Form 10-K was signed by Hill, Royal, Litster, Nishi, Possley, Spivey, Bonke, El-
27 Mansy, Rhoads and Whitaker. The 2004 Form 10-K was simultaneously distributed to
28 shareholders and the public. The 2004 Form 10-K included Novellus' 2004 financial statements
which were materially false and misleading and presented in violation of GAAP, due to improper
accounting for the backdated stock options. As a result, Novellus' compensation expense was
understated and its net earnings were overstated.

139. The 2004 Form 10K made the following false and misleading statements:

Stock-Based Compensation. We account for stock-based employee compensation using the intrinsic value method under Accounting Principles Board Opinion No. 25, Accounting for Stock Issued to Employees, or APB No. 25, and have adopted the disclosure-only provisions of Statement of Financial Accounting Standards No. 123, Accounting for Stock-Based Compensation, or SFAS No. 123, as amended by SFAS No. 148, Accounting for Stock-Based Compensation "Transition and Disclosures. Accordingly, no expense has been recognized for options granted to employees at fair value.

Employee Stock Option Plans

We grant options to employees under several stock option plans. Under the 1992 Stock Option Plan, which expired in fiscal 2002, options to purchase up to 33,300,000 shares of Novellus common stock were made *available for grant at not less than fair market value.*

The 2005 Form 10-K

140. On or about March 16, 2006, the Company filed its 2005 Form 10-K with the SEC. The 2005 Form 10-K was signed by Hill, Kurts, Foy, Bonke, El-Mansy, Listster, Nishi, Possley, Rhoads, Spivey and Whitaker. The 2005 Form 10-K was simultaneously distributed to shareholders and the public. The 2005 Form 10-K included Novellus' 2005 financial statements which were materially false and misleading and presented in violation of GAAP, due to improper accounting for the backdated stock options. As a result, Novellus' compensation expense was understated and its net earnings were overstated.

141. The 2005 Form 10K made the following false and misleading statement:

Employee Stock Option Plans

We grant options to employees under several stock option plans. Under the 1992 Stock Option Plan, which expired in fiscal 2002, options to purchase up to 33,300,000 shares of Novellus common stock were made available for grant at not less than fair market value.

142. The materially false and misleading 1995-2005 Form 10-Ks described above were reviewed, prepared and/or endorsed by the Director Defendants. The 1996-2005 10-Ks were signed by Defendant Hill as the Chairman of the Board and the CEO of Novellus. He also signed the 1995 10-K as the President and CEO of Novellus with former director Graham signing as the Chairman of the Board. Defendant Kurtz signed the 2005 10-K as CFO. Former Controller and

1 CFO Royal signed the 1999-2004 10-Ks and former CFO Smith signed the 1996-2001 10 Ks.
2 Former executive Wall signed the 1995 10-K as the CFO.

3 143. Then, on May 22, 2006, Novellus' stock dropped as a result of Merrill Lynch
4 issuing an analyst report in which it questioned Novellus' option granting practices for at least the
5 period 1997-2002.

6 144. During the Relevant Period, the Defendants caused Novellus' shares to trade at
7 artificially inflated levels by issuing a series of materially false and misleading statements
8 regarding the Company's financial statements, business and prospects. Specifically, Defendants
9 caused or allowed Novellus to issue statements that failed to disclose or misstated the following:
10 (i) that the Company had problems with its internal controls that prevented it from issuing
11 accurate financial reports and projections; (ii) that because of improperly recorded stock-based
12 compensation expenses the Company's financial results violated GAAP; and (iii) that the
13 Company's public disclosures presented an inflated view of Novellus' earnings and restated
14 earnings.

15 **DEFENDANTS' SCHEME BEGINS TO UNRAVEL**

16 145. The 1997-2006 Proxy Statements concealed Defendants' option backdating
17 scheme. Thus, the Company's shareholders remained unaware of Defendants' wrongdoing when
18 voting on proxy proposals between 1996 and 2006.

19 146. On May 22, 2006, a Merrill Lynch report was published entitled "Options Pricing –
20 Hindsight is 20/20." The report contained an analysis of options grant timing for the
21 semiconductor and semiconductor equipment companies that comprise the Philadelphia
22 Semiconductor Index. They focused on identifying companies where stock option grants preceded
23 large increases in a Company's stock price. In this analysis, Novellus was ranked forth and
24 labeled a "standout company" in terms of companies with excess returns following grant dates—
25 *i.e.*, companies that were likely to have backdated stock options.

26 147. The same day that the Merrill Lynch report was released, on May 22, 2006,
27 Novellus issued a press release denying the implications of the report. The Company stated "that
28 it has reviewed a Merrill Lynch report regarding options pricing in the semiconductor industry.

1 Novellus has reviewed its process of granting options to the named executive officers in the report
2 and has not found any irregularities.”

3 148. On May 25, 2006, Merrill Lynch issued an expanded report including a total of 47
4 companies in the semiconductor industry. Novellus was still ranked near the top of the list—now
5 at ninth place. The report stated that “[t]he results are notable—for the 1997-2002 Interval that we
6 studied, the stocks in our coverage universe have consistently generated excess returns during the
7 20-day period following options grants. It is difficult to avoid concluding that the timing of
8 options pricing for the period we studied has been very advantageous for the executives that
9 received options.”

10 149. On June 19, 2006, a Standard & Poor’s analyst expressed similar concerns:

11 Our review of Novellus Systems proxy filings and related research
12 indicates that the 12/16/1999 stock options grant was followed by an upward
13 revision to guidance that drove the stock 33% higher on Monday 12/20/1999. With
14 the Securities and Exchange Commission options-backdating investigation now
15 expanding to the timing of news flow, we are concerned that Novellus Systems
16 may face exposure to this investigation despite the proximity of the 1999 date to
17 grants in other years. In addition, following changing peer multiples, we believe
18 Novellus Systems shares are overvalued, and we are reducing our 12-month target
19 price to \$20 from \$34.

20 150. In October 2006, another research report was released by The Corporate Library.
21 This report looked at connections between directors and executives at 51 companies that had been
22 implicated in options backdating. In particular, it analyzed how the practice of backdating stock
23 options could have spread between the companies now implicated in the scandal. The report
24 showed that many of the companies involved in the scandal had directors and executives in
25 common that could have spread the practice throughout the companies. The Corporate Library
26 determined that Novellus was one of the three most central companies in terms of connections to
27 other implicated companies. See ¶¶177(i), (j), (k), (l).

28 151. Repeating their blanket denials in response to this report, Novellus was quoted in
an October 19, 2006 article in CFO.com, as saying:

Novellus has not been implicated in any wrongdoing with regard to stock
options backdating. Novellus has always filed its financial reports on time. In
addition, Novellus reviewed its processes with two legal firms, internal and
external auditors and its Board of Directors. The company issued a press release

1 on May 22, 2006 stating that the company reviewed its process of granting options
2 and did not find any irregularities.

3 152. However, Novellus neglected to say that it had been implicated in potential
4 backdating in three separate reports because of the highly suspect timing of some of its options
5 grants. Further, Novellus has yet to explain how their review of their options granting processes,
6 announced the very same day that the Merrill Lynch report was published, could have eliminated
7 the possibility that backdating did in fact occur.

8 **INTERNAL NOVELLUS DOCUMENTS SHOW CLEAR IRREGULARITIES IN
9 NOVELLUS' OPTION GRANTING PRACTICES**

10 153. Documents purporting to be approvals of the Board of Directors or the
11 Compensation and Stock Option Committee generally do not identify the dates on which the
12 Board or the Committee actually acted to grant or approve the options – a key factor in
13 determining the actual grant date of the options. Indeed, some of the documents affirmatively
14 show that the Board or Committee did not act to approve the grants until after the grants were
15 already made, despite the Company's policy that "[a]ll stock option grants must have the approval
16 of the Compensation and Stock Option Committee of the Board of Directors".

17 154. For example, one of the grants challenged in the complaints is a grant of 100,000
18 options to defendant Hill on January 2, 1997. This grant bears the date with the lowest closing
19 stock price of the first quarter of 1997, \$55.50. A document entitled [REDACTED]

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED] The closing stock price on February 3, 1997 was \$77.25, a \$21.75 increase over the
25 closing price on the reported grant date.

26 155. Letters from the Company Treasurer to four of the directors dated January 28,
27 1997, states that they were enclosing [REDACTED]
28 [REDACTED]

1 [REDACTED]
2 [REDACTED]
3 [REDACTED] On January 28, 1997 the closing stock price was \$75, \$19.50 higher than on January 2,
4 1997.

5 156. [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 [REDACTED] Defendant Hill was also granted 108,000 options with a grant date of July 18,
14 1998. [REDACTED]

15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]

22 158. [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

1 [REDACTED] The grant of 18,750 shares on January 4, 1999 to defendant Hill was also made
2 through a document entitled [REDACTED]

3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 [REDACTED]
11 [REDACTED]
12 [REDACTED]

13 161. [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]

18 TOLLING OF THE STATUTE OF LIMITATIONS

19 162. The Counts alleged herein are timely. As an initial matter, Defendants wrongfully
20 concealed their manipulation of the stock option plans, through strategic timing and fraudulent
21 backdating, by issuing false and misleading Proxy Statements, by falsely reassuring Novellus'
22 public investors that Novellus' option grants were being administered by a committee of
23 independent directors, and by failing to disclose that backdated options were, in fact, actually
24 issued on dates other than those disclosed, and that strategically timed option grants were issued
25 based on the manipulation of insider information that ensured that the true fair market value of the
26 Company's stock was, in fact, higher than the publicly traded price on the date of the option grant.

1 163. Novellus' public investors had no reason to know of the Defendants' breaches of
2 their fiduciary duties until May 22, 2006, when Merrill Lynch issued its report detailing the option
3 practices of Novellus.

4 164. Finally, as fiduciaries of Novellus and its public shareholders, the Defendants
5 cannot rely on any limitations defense where they withheld from Novellus' public shareholders
6 the facts that give rise to the claims asserted herein, i.e., that the Novellus Board had abdicated its
7 fiduciary responsibilities to oversee the Company's executive compensation practices, and that the
8 option grant dates had been manipulated to maximize the profit for the grant recipients and,
9 accordingly, to maximize the costs for the Company.

10 **DERIVATIVE AND DEMAND FUTILITY ALLEGATIONS**

11 165. Plaintiffs bring this action derivatively in the right and for the benefit of Novellus
12 to redress injuries suffered and to be suffered by Novellus as a direct result of defendants'
13 violations of state and federal law, breaches of fiduciary duty, abuse of control, constructive fraud,
14 gross mismanagement, corporate waste and unjust enrichment, as well as the aiding and abetting
15 thereof, by the Defendants. This is not a collusive action to confer jurisdiction on this Court
16 which it would not otherwise have.

17 166. Plaintiffs will adequately and fairly represent the interests of Novellus and its
18 shareholders in enforcing and prosecuting its rights.

19 167. Plaintiffs are owners of Novellus stock and were owners of Novellus stock during
20 times relevant to Defendants' illegal and wrongful course of conduct alleged herein.

21 168. Prior demand upon a board of directors is excused if plaintiffs allege facts that, if
22 accepted as true, raise a reasonable doubt that: (a) the challenged transaction was the product of a
23 valid business judgment; or (b) a majority of the directors are disinterested and independent. If
24 either prong of this test is satisfied, demand is excused.

25 169. By reason of their corporate positions and their ability to control the business and
26 corporate affairs of Novellus at all relevant times, the directors of Novellus owed Novellus and its
27 stockholders fiduciary duties of candor, fidelity, trust, and loyalty, and are and were required to
28 use their ability to control Novellus in a fair, just and equitable manner, as well as to act in

1 furtherance of the best interests of Novellus and its stockholders. In addition, the directors owed
2 Novellus the fiduciary duty to exercise due care and diligence in the management and
3 administration of the affairs of Novellus and in the use and preservation of its property and assets.
4 In violation of their fiduciary duties, Defendants approved of and/or caused Novellus to issue
5 illegally backdated stock options to many of its employees for a period beginning in at least 1997
6 and continuing until no earlier than 2006.

7 **Options Backdating is Not the Product of Business Judgment Because It is *Ultra Vires*,
8 Illegal, and Contrary to the Stated Purpose of the Stock Option Plans**

9 170. The practice of granting illegal and backdated stock options is not protected by the
10 business judgment rule because it is *ultra vires*. The various Incentive Stock Option Plans under
11 which these options were purportedly given, and the proxy statements disclosing grants to senior
12 executives and directors during this time period, all represented and required that the stock grants
13 in question be priced based on the fair market value of Novellus stock on the day of the grant.

14 171. However, contrary to this limited authority given to the Board by Novellus' Stock
15 Option Plans, and contrary to Novellus' representations in the proxy filings, many of Novellus'
16 option grants between 1997 and 2006 were priced at a date earlier than the actual date on which
17 they were granted. Because granting options using manipulated grant dates to lower the strike
18 price of the options is not permitted by the Stock Option Plans, this conduct is *ultra vires* and void
19 on its face. *Ultra vires* acts are not protected by the business judgment rule, and thus demand is
20 excused.

21 172. Additionally, Defendants' conduct caused Novellus to issue materially false
22 financial reports and proxy reports for the entirety of the period in question, in violation of
23 numerous provisions of the federal securities laws. Each defendant violated §10(b) and Rule 10b-5
24 of the Securities Exchange Act by participating in this fraudulent scheme. Each director defendant
25 violated §14(a) of the Securities Exchange Act by issuing false and misleading proxy statements
26 from 1996 to 2005. And each Director violated §20(a) of the Securities Exchange Act by being
27 controlling persons of Novellus and engaging in the purchase and/or sale of Novellus stock while in
28 the possession of material non-public information regarding Novellus' backdating scheme.

1 Demand is excused because these are illegal acts that are not protected by the business judgment
2 rule.

3 173. Even if stock option backdating was not illegal, *ultra vires*, and void, there would
4 be no plausible argument that backdating stock options was a valid exercise of business judgment.
5 As represented in Novellus' proxy statements, the stated purpose of Novellus' Incentive Stock
6 Option Plans is to encourage the productivity of Novellus employees by providing compensation
7 that is proportional to gains in Novellus' stock price. However, by granting options with
8 backdated strike prices, defendants undermined the purpose of the Stock Option Plans by
9 awarding employees compensation that had intrinsic value regardless of gains in Novellus' stock
10 price. In effect, this practice was nothing more than secret handouts to executives and employees
11 at the expense of unsuspecting shareholders and the market at large.

12 174. Defendants could have achieved the stated purpose of attracting and retaining
13 qualified employees by granting those employees additional options under their incentive plans, or
14 by granting options at a price less than the fair market value on the day of the grant and simply
15 disclosing and expensing these grants. Instead, defendants intentionally concealed and illegally
16 reported these grants in their financial disclosures to improve their bottom line.

17 175. Further, the practice of backdating stock options could not have been a valid
18 exercise of business judgment because it has subjected Novellus to potentially massive liability.
19 The Company's practices may well be investigated by the SEC and DOJ, if they are not already.
20 The Company will likely suffer tax liabilities for the additional compensation they will have to
21 expense, and they have tarnished their reputation in the investment community through this
22 deliberate and calculated conduct.

23 **A Majority of Novellus' Directors Are Not Independent and Disinterested**

24 176. In addition to the fact that backdating stock options is not protected by the business
25 judgment rule, demand is excused because plaintiffs can show a reasonable doubt that the
26 majority of directors were not disinterested or independent at the time that this action was filed.
27 At the time that plaintiffs filed this action, Novellus' board consisted of Hill, Bonke, El-Mansy,
28 Litster, Nishi, Possley, Rhoads, Spivey, and Whitaker.

1 177. Based upon the facts set forth throughout this Complaint, applicable law and the
2 longstanding rule that equity does not compel a useless and futile act, a pre-filing demand upon
3 the Novellus Board of Directors to institute this action against the officers and members of the
4 Novellus Board of Directors is excused as futile. A pre-filing demand would be a useless and
5 futile act because:

6 (a) During the Relevant Period, defendant Hill was the recipient of the stock
7 option grants which plaintiffs allege were backdated. Because Hill received a personal benefit
8 from the challenged transaction, he is interested and unable to objectively consider a demand on
9 the Company.

10 (b) The members of Novellus' Board have demonstrated their unwillingness
11 and/or inability to act in compliance with their fiduciary obligations and/or to sue themselves
12 and/or their fellow directors and allies in the top ranks of the corporation for the violations of law
13 complained of herein. For example, no actions have been taken against long-time officer and
14 member of the Board defendant Hill, or long time officer defendant Benzing, who has been an
15 officer at Novellus in various capacities since 1992, with regard to the excess returns generated by
16 the backdated options. Thus, despite these breaches of duty, the Board did not recommend that
17 any defendant be relieved of his duties as an officer or a director. By maintaining the status quo
18 in light of these breaches of duty, the entire Board failed to exercise proper judgment.

19 (c) Most egregiously, the Board has not required that at least defendants Hill
20 and Benzing immediately disgorge all of their ill-gotten gains from their improper manipulation of
21 their stock option grants and insider trading proceeds, has not required them to return all
22 unexecuted stock options to the Company insider trading proceeds, and has not required them to
23 disgorge their bonuses and equity-based compensation to the Company, despite their breaches of
24 fiduciary duties, which worked a direct harm to the Company. Nor has the Board taken any other
25 action, including commencing legal proceedings, to protect the interests of the Company.

26 (d) Based, in part, on their membership on the Novellus Board, the members of
27 the Novellus Board have developed professional relationships with, are friends with and have
28 entangling financial alliances, interests and dependencies with each other, and therefore, they are

1 not able to and will not vigorously prosecute any such action. For example, the Board is unlikely
2 to pursue any action against former director, defendant Guzy, who served as a director on the
3 Board from 1990 to 2004 and served on the Stock Option Committee and Compensation
4 Committee responsible for the administration of the Stock Option Plan during the years of
5 backdating at Novellus. Guzy was also a director on the Intel Corp. Board of Directors ("Intel
6 Board") and during his concurrent directorship from 2000-2002 on both the Intel and Novellus
7 Boards, Intel purchased total products and services from Novellus in the amount of \$489.0
8 million.

9 (e) These long-term business and professional relationships also mean that
10 current directors are not disinterested. Defendant Possley has served on the Novellus Board for
11 over 15 years, since 1991. Possley also served as president of SubMicron Technology, Inc. from
12 June 1994 through December 1997, a company to which Novellus sold \$25.6 million of products
13 from 1996 to 1997. Possley also served on the Stock Option Committee and Compensation
14 Committee during the period of backdating.

15 (f) Defendant Hill's independence is compromised because as he serves
16 concurrent roles of CEO and chairman of the Novellus Board, and has since 1993. Hill also
17 received a relocation loan of \$1.5 million in July 1997. The accrued interest on the loan was
18 forgiven by Novellus in connection with the repayment of the loan in March 2000. Defendants
19 Litster and Spivey have served on the Board with Possley and Hill since 1998 participating in the
20 transactions associated with Possley and Hill.

21 (g) In addition to the aforementioned inter-relationships and as a result of this
22 long history on the Board and with Novellus, the long term directors dominate and control the
23 other directors such that the more recently elected directors cannot act independently of them.
24 This control also arises because each of these long-time Board members has either worked with
25 each other or with various other Board members at other technology firms in a position of control
26 and authority:

Connecting Co.	Defendant	Novellus Position	Tenure @ Connecting Co.
Tektronix	Richard Hill	CEO (since 1993) Chair (since 1996)	1981-1993: President, VP of Test & Measurement Group
	William R. Spivey	Board Member (since 1998)	Group President (1991-1994)
Motorola	Richard Hill	CEO (since 1993) Chair (since 1996)	Engineering & Management Positions (prior to 1981)
	Glen G. Possley	Director (Jul. 1991 – to date)	Engineering & Management Positions
General Electric	Richard Hill	CEO (since 1993) Chair (since 1996)	Engineering & Management Positions (prior to 1981)
	William R. Spivey	Board Member (since 1998)	1970-1978
	Delbert A. Whitaker	Board Member (since Mar. 2002)	Engineer (prior 1968)
Semiconductor Research Co.	Richard Hill	CEO (since 1993) Chair (since 1996)	Board Member
	Yoshio Nishi	Board Member (Nov. 2002 – to date)	Board Member (Past)
SEMI	Richard Hill	CEO (since 1993) Chair (since 1996)	Board Member (Past)
	Neil R. Bonke (SEMI Sematech)	Board Member	Board Member
Luminent	Richard Hill	CEO (since 1993) Chair (since 1996)	Director
	William R. Spivey	Board Member (since 1998)	President, CEO (Jul. 2000 – Sept. 2001)
SpeedFam-IPEC	Richard Hill	CEO (since 1993) Chair (since 1996)	Director (past)
	Neil R. Bonke	Board Member	Board member
Hewlett Packard	Jeffrey C. Benzing	Director (Nov. 1998) Various VP (1992-2002)	1979-1984
	Yoshio Nishi	Board Member (Nov. 2002 – to date)	Sr. Mgmt Positions (1986-1995)
AT&T	William H. Hurtz	VP & CFO (since Sept. 2005)	Various positions accounting, finance, VP Gen. Mgr (Jul. 1983 – Aug. 1998)
	William R. Spivey	Board Member (since 1998)	VP Systems & Components Group (1994 - 1997)
Texas Instruments	Yoshio Nishi	Board Member (Nov. 2002 - to date)	Sr. VP, Director of R&D (1995 – 2004)
	Glenn G. Possley	Director (Jul. 1991 – to date)	Manager, Engineer, Various Positions
	Delbert A. Whitaker	Board Member (since Mar. 2002)	Sr. VP
International Sematech	Yoshio Nishi	Board Member (Nov. 2002 – to date)	Board Member (past)
	Neil R. Bonke (SEMI Sematech)	Board Member	Board Member

1 (h) Because of the numerous interlocking management and directorial positions
2 shown above, it is highly unlikely that any of the defendants will recommend suit against each
3 other.

4 (i) In addition to these connections, several current and recent Novellus
5 directors and executives are affiliated with other companies that that have been implicated in
6 options backdating. As the Corporate Library report found, the level of interconnectedness
7 between directors sitting on the boards of companies implicated in the options backdating scandal
8 was much higher than could be expected from a similar, randomly selected sample. This led them
9 to the conclusion that backdating stock options could have been spread by word of mouth, through
10 directors sitting on the boards of more than one company. The Corporate Library reported that
11 Novellus was one of the three most connected companies in this respect, as three current and
12 former directors and executives were connected to four companies that have been implicated in
13 options backdating.

14 (i) Kevin S. Royal: Kevin S. Royal served as Novellus' CFO from
15 January 2002 to April 2005. He is now the CFO of Blue Coat Systems, Inc. ("Blue Coat"). Blue
16 Coat announced on August 3, 2006 that it has been informed by the SEC of an informal inquiry
17 into its stock option practices. On September 11, 2006, Blue Coat said it would take additional
18 and material non-cash stock-based compensation expenses relating to stock option award dates.
19 The company said the actual measurement dates of certain stock options granted primarily from
20 fiscal 2000 to 2004 differ from the recorded grant dates of the awards.

21 (ii) Neil R. Bonke: Neil R. Bonke has been a director at Novellus since
22 2004. Bonke has also been a director of Sanmina-SCI since 2004. On September 13, 2006,
23 Sanmina announced that it will restate its financial results for periods as far back as 2002, and will
24 incur additional, material charges in those periods because of errors in accounting for past stock
25 option grants. On October 12, 2006 the company said a U.S. grand jury is probing its stock option
26 grant practices, adding that its own internal probe found that most option grants to executives and
27 employees weren't correctly dated or accounted for since 1997. Sanmina said it plans to restate its
28 historical results and record noncash compensation charges. The company's four-month

1 investigation found that a former executive and a current manager improperly dated or accounted
2 stock options from 1997 to 2006.

3 (iii) William H. Kurtz: William H. Kurtz has been CFO of Novellus
4 since 2005. He is currently a member of the board of directors and chair of the audit committee at
5 PMC-Sierra and Redback Networks. PMC-Sierra recently concluded that the company used
6 incorrect accounting measurement dates for certain stock-option grants awarded primarily during
7 the years 1998-2001. On November 9, 2006, PMC-Sierra disclosed that the SEC has begun an
8 informal inquiry into its past stock-option-granting practices. On June 30, Redback Networks said
9 it received an informal request from the SEC for information related to historical stock option
10 grants. The company said it was also subpoenaed by the U.S. Attorney for the Northern District of
11 California related to stock option grants.

12 (j) The Stock Option and Compensation Committee was at all relevant times
13 responsible for overseeing the Company's compensation, employee benefit and stock option
14 plans. It was also responsible for supervising incentive compensation programs for the
15 Company's employees. The members of the Stock Option and Compensation Committee, and the
16 Board by its approval of their recommendations, enabled, or through conscious abdication of duty,
17 permitted the Company to backdate stock option grants issued to certain Defendants. By such
18 actions, Defendants breached their fiduciary duties to the Company. The backdating of stock
19 option grants was in direct violation of the stock option plans. Thus, there is reasonable doubt that
20 the members of the Stock Option and Compensation Committee, defendants Possley, Litster,
21 Spivey, El-Mansy, Nishi, and Whitaker are disinterested;

22 (k) The Audit Committee was responsible for overseeing the accounting and
23 financial reporting processes of the Company, the audits of the Company's financial statements,
24 and the Company's internal control over financial reporting. The members of the Audit
25 Committee, and the Board by its approval of their actions and recommendations, enabled, or
26 through conscious abdication of duty, permitted the Company to backdate stock option grants
27 issued to certain Defendants. By such actions, Defendants breached their fiduciary duties to the
28

Company. Thus, there is reasonable doubt that the members of the Audit Committee, defendants Whitaker, Rhoads, Bonke, and Possley are disinterested.

(l) The following chart shows the makeup of the Board of Directors and committee assignments at Novellus from 1994 to 2005:

	Smith	Long	Guzy	Spivey	Litster	Whitaker	Nishi	Rhoads	Bonke	El-Mansy	Hill	Possley
1994			AC, SOC								CC	SOC
1995	AC, SOC	SOC	AC, CC, SOC								CC	✓
1996	AC, CC	CC, SOC	AC, CC, SOC								✓	✓
1997	✓	✓	AC, CC, SOC								✓	CC, SOC
1998	✓	SOCC	SOCC	SOCC	AC, SOCC						✓	AC, SOCC
1999	✓	SOCC	SOCC	SOCC	AC, SOCC						✓	AC, SOCC
2000	✓	AC, SOCC	AC, SOCC	AC, SOCC	SOCC						✓	SOCC
2001	✓	AC, SOCC	AC, SOCC	AC, SOCC	SOCC						✓	SOCC
2002			AC	SOCC	AC	AC	SOCC				✓	SOCC
2003			AC, GNC	SOCC, GNC	SOCC	SOCC, GNC	SOCC, GNC	AC			✓	AC
2004			AC, GNC	SOCC	SOCC, GNC	SOCC, GNC	SOCC, GNC	AC	AC	SOCC, GNC	✓	AC
2005				SOCC, GNC	SOCC, GNC	AC, SOCC, GNC	SOCC, GNC	AC	AC	SOCC, GNC	✓	AC

✓ = Member of the Board of Directors but not assigned to a committee

AC = Member of the Audit Committee

SOC = Member of the Stock Option Committee

CC = Member of the Compensation Committee

SSOC = Member of the Stock Option and Compensation Committee

GNC = Member of the Governance and Nominations Committee

(m) The Novellus Board cannot exercise independent objective judgment in deciding whether to bring this action or whether to vigorously prosecute this action because each of its members participated personally in the wrongdoing or are dependent upon other Defendants who also did.

1 (n) The Novellus Board of Directors and senior management participated in,
2 approved and/or permitted the wrongs alleged herein to have occurred and participated in efforts
3 to conceal or disguise those wrongs from Novellus' stockholders or recklessly and/or negligently
4 disregarded the wrongs complained of herein, and are therefore not disinterested parties. As a
5 result of their access to and review of internal corporate documents, or conversations and
6 connections with other corporate officers, employees, and directors and attendance at management
7 and/or Board meetings, each of the Defendants knew the adverse non-public information
8 regarding the improper stock option grants and financial reporting. Pursuant to their specific
9 duties as Board members, the Director Defendants are charged with the management of the
10 Company and to conduct its business affairs. Defendants breached the fiduciary duties that they
11 owed to Novellus and its shareholders in that they failed to prevent and correct the improper stock
12 option granting and financial reporting;

13 (o) During the Relevant Period, the Defendants authorized the filing of Proxy
14 Statements, in support of their nomination as Directors, which failed to disclose that certain
15 Directors' stock options had been backdated. They also authorized the filing of shareholder
16 approved stock option plans, which misrepresented that the options carry the stock price of the
17 day of the award. Any suit by the Defendants to remedy the wrongs complained of herein could
18 also expose them to suit for securities fraud and proxy violations; thus, they are hopelessly
19 conflicted in making any supposedly independent determination of a demand that they cause the
20 Company to bring this action;

21 (p) All of the Defendants signed one or more of the Company's Annual
22 Reports during the Relevant Period, which contained the Company's financial statements, which
23 failed to account for the backdated stock options as compensation and an expense of the
24 Company. As a result, those financial statements of the Company may have overstated its profits
25 and may need to be restated. Any suit by the Defendants to remedy the wrongs complained of
26 herein could also expose them to suit for securities fraud; thus, they are hopelessly conflicted in
27 making any supposedly independent determination of a demand that they cause the Company to
28 bring this action;

1 (q) The acts complained of constitute violations of the fiduciary duties owed by
2 Novellus' officers and directors and these acts are incapable of ratification;

3 (r) The members of Novellus' Board have benefited, and will continue to
4 benefit, from the wrongdoing herein alleged and have engaged in such conduct to preserve their
5 positions of control and the perquisites derived thereof, and are incapable of exercising
6 independent objective judgment in deciding whether to bring this action.

7 (s) Any suit by the current directors of Novellus to remedy these wrongs would
8 likely further expose the liability of Defendants under the federal securities laws, which could
9 result in additional civil and/or criminal actions being filed against one or more of the Defendants,
10 thus, they are hopelessly conflicted in making any supposedly independent determination whether
11 to sue themselves;

12 (t) Novellus has been and will continue to be exposed to significant losses due
13 to the wrongdoing complained of herein, yet the current Board has not filed any lawsuits against
14 itself or others who were responsible for that wrongful conduct to attempt to recover for Novellus
15 any part of the damages Novellus suffered and will suffer thereby;

16 (u) In order to properly prosecute this lawsuit, it would be necessary for the
17 directors to sue themselves and the other Defendants, requiring them to expose themselves and
18 their comrades to millions of dollars in potential civil liability and criminal sanctions, or IRS
19 penalties. This they will not do.

20 (v) Novellus' current and past officers and directors are protected against
21 personal liability for their acts of mismanagement, waste and breach of fiduciary duty alleged in
22 this Complaint by directors' and officers' liability insurance which they caused the Company to
23 purchase for their protection with corporate funds, i.e., monies belonging to the stockholders of
24 Novellus. However, due to certain changes in the language of directors' and officers' liability
25 insurance policies in the past few years, the directors' and officers' liability insurance policies
26 covering the Defendants in this case contain provisions which eliminate coverage for any action
27 brought directly by Novellus against these Defendants, known as, inter alia, the "insured versus
28 insured exclusion." As a result, if these directors were to sue themselves or certain of the officers

1 of Novellus, there would be no directors' and officers' insurance protection and thus, this is a
2 further reason why they will not bring such a suit. On the other hand, if the suit is brought
3 derivatively, as this action is brought, such insurance coverage exists and will provide a basis for
4 the Company to effectuate a recovery;

5 (w) In order to bring this action for breaching their fiduciary duties, the
6 members of the Novellus Board would have been required to sue themselves and/or their fellow
7 directors and allies in the top ranks of the Company, who are their personal friends and with
8 whom they have entangling financial alliances, interests and dependencies, which they would not
9 do.

10 178. Plaintiffs have not made any demand on shareholders of Novellus to institute this
11 action since such demand would be a futile and useless act for the following reasons:

12 (a) Novellus is a publicly traded company with approximately 127 million
13 shares outstanding, and thousands of shareholders;

14 (b) Making demand on such a number of shareholders would be impossible for
15 plaintiffs who have no way of finding out the names, addresses or phone numbers of shareholders;
16 and

17 (c) Making demand on all shareholders would force plaintiffs to incur huge
18 expenses, assuming all shareholders could be individually identified.

19 **COUNT I**
20 **Violations of Section 10(b) And Rule 10b-5 of the Exchange Act**
Against All Defendants

21 179. Plaintiffs incorporate by reference and reallege each and every allegation set forth
22 above, as though fully set forth herein.

23 180. Throughout the Relevant Period, Defendants individually and in concert, directly
24 and indirectly, by the use and means of instrumentalities of interstate commerce and/or of the
25 mails, engaged and participated in a continuous course of conduct designed to divert hundreds of
26 millions of dollars to Defendants via improper option grants.

27 181. Defendants employed devices, schemes and artifices to defraud while in possession
28 of material, adverse non-public information and engaged in acts, practices and a course of conduct

1 that included the making of, or participation in the making of, untrue and/or misleading statements
2 of material facts and/or omitting to state material facts necessary in order to make the statements
3 made about Novellus not misleading.

4 182. Defendants, as top executive officers and directors of the Company, are liable as
5 direct participants in the wrongs complained of herein. Through their positions of control and
6 authority as officers of the Company, each of the Defendants was able to and did control the
7 conduct complained of herein and the content of the public statements disseminated by Novellus.

8 183. Defendants acted with scienter throughout the Relevant Period, in that they either
9 had actual knowledge of the misrepresentations and/or omissions of material facts set forth herein,
10 or acted with reckless disregard for the truth in that they failed to ascertain and to disclose the true
11 facts, even though such facts were available to them. Defendants were among the senior
12 management of the Company, and were therefore directly responsible for the false and misleading
13 statements and/or omissions disseminated to the public through press releases, news reports and
14 filings with the SEC.

15 184. Each of the Defendants participated in a scheme to defraud with the purpose and
16 effect of defrauding Novellus.

17 185. By virtue of the foregoing, Defendants have violated §10(b) of the Exchange Act,
18 and Rule 10b-5 promulgated thereunder.

19 **COUNT II**
20 **Violations of Section 14(a) of the Exchange Act**
Against All Defendants

21 186. Plaintiffs incorporate by reference and realleges each and every allegation set forth
22 above, as though fully set forth herein.

23 187. Rule 14a-9, promulgated pursuant to §14(a) of the Exchange Act, provides that no
24 proxy statement shall contain "any statement which, at the time and in the light of the
25 circumstances under which it is made, is false or misleading with respect to any material fact, or
26 which omits to state any material fact necessary in order to make the statements therein not false
27 or misleading." 17 C.F.R. §240.14a-9.

196. In breach of their fiduciary duties owed to Novellus and its shareholders, the Defendants caused Novellus, among other things, to grant backdated stock options to themselves and/or certain other officers and directors of Novellus. By this wrongdoing, the Defendants breached their fiduciary duties owed to Novellus and its shareholders.

197. The Defendants possess complete and unfettered control over their improperly issued stock option grants and the books and records of the Company concerning the details of such improperly backdated stock option grants to the Defendants.

198. As a result of Defendants' misconduct, Novellus has been substantially injured and damaged financially and is entitled to a recovery as a result thereof, including the proceeds of those improperly granted options which have been exercised and sold.

199. Plaintiffs demands an accounting be made of all stock option grants made to Defendants, including, without limitation, the dates of the grants, the amounts of the grants, the value of the grants, the recipients of the grants, the exercise date of stock options granted to the Defendants, as well as the disposition of any proceeds received by the Defendants via sale or other exercise of backdated stock option grants received by the Defendants.

COUNT V
Breach of Fiduciary Duty and/or Aiding And Abetting
Against All Defendants

200. Plaintiffs incorporate by reference and realleges each and every allegation set forth above, as though fully set forth herein.

201. Each of the Defendants agreed to and did participate with Hill and Benzing and the other Defendants and/or aided and abetted one another in a deliberate course of action designed to divert corporate assets in breach of fiduciary duties the Defendants owed to the Company.

202. The Defendants have violated fiduciary duties of care, loyalty, candor and independence owed to Novellus and its public shareholders, have engaged in unlawful self-dealing and have acted to put their personal interests and/or their colleagues' interests ahead of the interests of Novellus and its shareholders.

203. As demonstrated by the allegations above, Defendants failed to exercise the care required, and breached their duties of loyalty, good faith, candor and independence owed to

1 Novellus and its public shareholders, and they failed to disclose material information and/or made
2 material misrepresentations to shareholders regarding Defendants' option backdating scheme.

3 204. By reason of the foregoing acts, practices and course of conduct, the Defendants
4 have failed to exercise ordinary care and diligence in the exercise of their fiduciary obligations
5 toward Novellus and its public shareholders.

6 205. As a proximate result of Defendants' conduct, in concert with Hill and Benzing,
7 Novellus has been injured and is entitled to damages.

8 **COUNT VI**
9 **Abuse of Control**
10 **Against All Defendants**

11 206. Plaintiffs incorporate by reference and realleges each and every allegation set forth
12 above, as though fully set forth herein.

13 207. The Defendants employed the alleged scheme for the purpose of maintaining and
14 entrenching themselves in their positions of power, prestige and profit at, and control over,
15 Novellus, and to continue to receive the substantial benefits, salaries and emoluments associated
16 with their positions at Novellus. As a part of this scheme, Defendants actively made and/or
17 participated in the making of or aided and abetted the making of, misrepresentations regarding
18 Novellus.

19 208. Defendants' conduct constituted an abuse of their ability to control and influence
20 Novellus.

21 209. By reason of the foregoing, Novellus has been damaged.

22 **COUNT VII**
23 **Gross Mismanagement**
24 **Against All Defendants**

25 210. Plaintiffs incorporate by reference and realleges each and every allegation set forth
26 above, as though fully set forth herein.

27 211. Defendants had a duty to Novellus and its shareholders to prudently supervise,
28 manage and control the operations, business and internal financial accounting and disclosure
controls of Novellus.

212. Defendants, by their actions and by engaging in the wrongdoing described herein, abandoned and abdicated their responsibilities and duties with regard to prudently managing the businesses of Novellus in a manner consistent with the duties imposed upon them by law. By committing the misconduct alleged herein, Defendants breached their duties of due care, diligence and candor in the management and administration of Novellus' affairs and in the use and preservation of Novellus' assets.

213. During the course of the discharge of their duties, Defendants knew or recklessly disregarded the unreasonable risks and losses associated with their misconduct, yet Defendants caused Novellus to engage in the scheme complained of herein which they knew had an unreasonable risk of damage to Novellus, thus breaching their duties to the Company. As a result, Defendants grossly mismanaged Novellus.

214. By reason of the foregoing, Novellus has been damaged.

**COUNT VIII
Constructive Fraud
Against All Defendants**

215. Plaintiffs incorporate by reference and realleges each and every allegation set forth above, as though fully set forth herein.

216. As corporate fiduciaries, Defendants owed to Novellus and its shareholders a duty of candor and full accurate disclosure regarding the true state of Novellus' business and assets and their conduct with regard thereto.

217. As a result of the conduct complained of, Defendants made, or aided and abetted the making of, numerous misrepresentations to and/or concealed material facts from Novellus' shareholders despite their duties to, inter alia, disclose the true facts regarding their stewardship of Novellus. Thus they have committed constructive fraud and violated their duty of candor.

218. By reason of the foregoing, Novellus has been damaged.

**COUNT IX
Corporate Waste
Against All Defendants**

219. Plaintiffs incorporate by reference and realleges each and every allegation set forth above, as though fully set forth herein.

1 220. By failing to properly consider the interests of the Company and its public
2 shareholders, by failing to conduct proper supervision, and by giving away millions of dollars to
3 Defendants via the option backdating scheme, Defendants have caused Novellus to waste valuable
4 corporate assets.

5 221. As a result of Defendants' corporate waste, they are liable to the Company.

6 **COUNT X**
7 **Unjust Enrichment**
8 **Against All Defendants**

9 222. Plaintiffs incorporate by reference and realleges each and every allegation set forth
10 above, as though fully set forth herein.

11 223. As a result of the conduct described above, Defendants will be and have been
12 unjustly enriched at the expense of Novellus, in the form of unjustified salaries, benefits, bonuses,
13 stock option grants and other emoluments of office.

14 224. Certain Defendants also obtained severance benefits that were not earned or
15 justified but were instead paid as part of a scheme to cover up Defendants' complicity in the
16 scheme.

17 225. All the payments and benefits provided to the Defendants were at the expense of
18 Novellus. The Company received no benefit from these payments. Novellus was damaged by
19 such payments.

20 226. Certain of the Defendants sold Novellus stock for a profit during the period of
21 deception, misusing confidential non-public corporate information. These Defendants should be
22 required to disgorge the gains which they have and/or will otherwise unjustly obtain at the
23 expense of Novellus. A constructive trust for the benefit of the Company should be imposed
24 thereon.

25 **COUNT XI**
26 **Against All Defendants**
27 **For Rescission**

28 227. Plaintiffs incorporate by reference and realleges each and every allegation
29 contained above as though fully set forth herein.

COUNT XII
Against The Insider Selling Defendants
For Violation of California Corporations Code Section 25402

231. At the time that the Insider Selling Defendants sold their Novellus common stock as set forth herein at 54, by reason of their high executive and/or directorial positions with Novellus, the Insider Selling Defendants had access to highly material information regarding the Company, including the information set forth herein regarding the true adverse facts of Novellus' improper accounting.

233. The Insider Selling Defendants, and each of them, had actual knowledge of material, adverse non-public information and thus sold their Novellus common stock in California in violation of California Corporations Code §25402.

234. Pursuant to California Corporations Code §25502.5, the Insider Selling Defendants, and each of them, are liable to Novellus for damages in an amount up to three times the difference between the price at which Novellus common stock was sold by these defendants,

1 and each of them, and the market value which Novellus common stock would have had at the time
 2 of the sale if the information known to these defendants, and each of them, had been publicly
 3 disseminated prior to that time and a reasonable time had elapsed for the market to absorb the
 4 information.

5 **COUNT XIII**
 6 **Against the Insider Selling Defendants**
 7 **For Breach of Fiduciary Duties For Insider Selling and Misappropriation of Information**

8 235. Plaintiffs incorporate by reference and realleges each and every allegation set forth
 9 above, as though fully set forth herein.

10 236. At the time of the stock sales set forth herein, the Insider Selling Defendants knew
 11 the information described above, and sold Novellus common stock on the basis of such
 12 information.

13 237. The information described above was proprietary non-public information
 14 concerning the Company's financial condition and future business prospects. It was a proprietary
 15 asset belonging to the Company, which the Insider Selling Defendants used for their own benefit
 16 when they sold Novellus common stock.

17 238. At the time of their stock sales, the Insider Selling Defendants knew that the
 18 Company's revenues were materially overstated. The Insider Selling Defendants' sales of
 19 Novellus common stock while in possession and control of this material adverse non-public
 20 information was a breach of their fiduciary duties of loyalty and good faith.

21 239. Since the use of the Company's proprietary information for their own gain
 22 constitutes a breach of the Insider Selling Defendants' fiduciary duties, the Company is entitled to
 23 the imposition of a constructive trust on any profits the Insider Selling Defendants obtained
 24 thereby.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, plaintiffs demands judgment as follows:

27 A. Awarding money damages against all Defendants, jointly and severally, for all
 28 losses and damages suffered as a result of the acts and transactions complained of herein, together
 with pre-judgment interest, to ensure Defendants do not participate therein or benefit thereby;

1 B. Directing all Defendants to account for all damages caused by them and all profits
2 and special benefits and unjust enrichment they have obtained as a result of their unlawful
3 conduct, including all salaries, bonuses, fees, stock awards, options and common stock sale
4 proceeds and imposing a constructive trust thereon;

5 C. Directing Novellus to take all necessary actions to reform and improve its
6 corporate governance and internal control procedures to comply with applicable law, including,
7 but not limited to, putting forward for a shareholder vote resolutions for amendments to the
8 Company's By-Laws or Articles of Incorporation and taking such other action as may be
9 necessary to place before shareholders for a vote adoption of the following Corporate Governance
10 policies:

11 (ii) a proposal requiring that the office of CEO of Novellus and
12 Chairman of the Novellus Board of Directors be permanently held by separate individuals and that
13 the Chairman of the Novellus Board meets rigorous "independent" standards;

14 (iii) a proposal to strengthen the Novellus Board's supervision of
15 operations and develop and implement procedures for greater shareholder input into the policies
16 and guidelines of the Board;

17 (iv) appropriately test and then strengthen the internal audit and control
18 function;

19 (v) rotate independent auditing firms every five years;

20 (vi) control and limit insider stock selling and the terms and timing of
21 stock option grants; and

22 (vii) reform executive compensation.

23 (viii) Ordering the imposition of a constructive trust over Defendants'
24 stock options and any proceeds derived therefrom;

25 (ix) Awarding punitive damages;

26 (x) Awarding costs and disbursements of this action, including
27 reasonable attorneys', accountants', and experts' fees; and
28

1 (xi) Granting such other and further relief as this Court may deem just
2 and proper.

3 **JURY DEMAND**

4 Plaintiffs demand a trial by jury.

5 DATED: December 8, 2006

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
SHAWN A. WILLIAMS

7 _____/s/
8 SHAWN A. WILLIAMS

9 100 Pine Street, Suite 2600
San Francisco, CA 94111
Telephone: 415/288-4545
10 415/288-4534 (fax)

11 LERACH COUGHLIN STOIA GELLER
12 RUDMAN & ROBBINS LLP
13 TRAVIS E. DOWNS III
14 BENNY C. GOODMAN III
15 THOMAS G. WILHELM
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

16 Attorneys for Plaintiff

17
18
19
20 T:\CasesSF\Novellus Derivative\CPT00037259_REDACTED.doc

VERIFICATION

I, SHAWN A. WILLIAMS, hereby declare as follows:

1. I am a member of the law firm of Lerach Coughlin Stoia Geller Rudman & Robbins, LLP, counsel for plaintiff in the above-entitled action. I have read the foregoing complaint and know the contents thereof. I am informed and believe the matters therein are true and on that ground allege that the matters stated therein are true.

2. I make this Verification because plaintiff is absent from the County of San Francisco where I maintain my office.

Executed this 8th day of December 2006 at San Francisco, California.

/s/

SHAWN A. WILLIAMS

T:\CasesSF\Novellus Derivative\CPT00037259_REDACTED.doc

CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

/s/

SHAWN A. WILLIAMS

Lerach Coughlin Stoia Geller Rudman &
Robbins LLP
100 Pine Street, 26th Floor
San Francisco, CA 94111
Telephone: 415/288-4545
415/288-4534 (fax)
E-mail: Swilliams@lerachlaw.com

Mailing Information for a Case 5:06-cv-03514-RMW

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Francis A. Bottini, Jr**
bottini@whafh.com
- **Travis E. Downs, III**
travisd@lerachlaw.com e_file_sd@lerachlaw.com
- **Francis M. Gregorek**
gregorek@whafh.com
- **Sunil R. Kulkarni**
skulkarni@mofo.com msousa@mofo.com
- **William S. Lerach**
e_file_sf@lerachlaw.com
- **Betsy C. Manifold**
manifold@whafh.com
- **Maria V. Morris**
mariam@lerachlaw.com e_file_sf@lerachlaw.com
- **Rachele R. Rickert**
rickert@whafh.com
- **Darren J. Robbins**
- **Shawn A. Williams**
shawnw@lerachlaw.com
e_file_sd@lerachlaw.com;e_file_sf@lerachlaw.com;AelishB@lerachlaw.com;MoniqueW@lerach

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

Betsy C Manifold
Wolf Holdenstein Adler Freeman & Herz LLP
Symphony Tower
Suite 2770
750 B. Street
San Diego, CA 92101